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COMMISSION OF INQUIRY  
INTO THE  
NON-MEDICAL USE OF DRUGS

COMMISSION D'ENQUETE  
SUR L'USAGE DES DROGUES  
A DES FINS NON MEDICALES

Law Symposium  
Chateau Champlain Hotel  
Montreal, Quebec  
March 6, 1971



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2 INTO THE  
3 NON-MEDICAL USE OF DRUGS

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5 SUR L'USAGE DES DROGUES  
6 A DES FINS NON MEDICALES

7 BEFORE:

8 Gerald LeDain, Chairman,  
9 Ian Campbell, Member,  
10 Marie-Andree Bertrand, Member,  
11 J. Peter Stein, Member,  
12 H. E. Lehmann, M.D., Member,  
13 James J. Moore, Executive Secretary.

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Chateau Champlain Hotel  
Montreal, Quebec  
March 6, 1971



1        Upon commencing at 9:40 a.m.

2                        THE CHAIRMAN: Ladies and gentlemen,  
3        first of all a welcome and a word of personal apology  
4        for having held the meeting up. I have come the  
5        shortest distance and taken the longest time to get  
6        here. But anyway, I must say -- congratulate you all,  
7        many of whom have come from far points of the globe.  
8        I don't know whether it is the attraction of the subject  
9        matter or the attraction of Montreal or the intrepid  
10       character of people in this field or just some kind of  
11       loss of touch with reality which has overcome our staff  
12       in the course of this exercise. Maybe it is a combina-  
13       tion of some or all of them but I must say that I was  
14       somewhat faint hearted yesterday morning at 8:00 o'clock  
15       when my own plane had been cancelled and I was told  
16       that I couldn't get a reservation until midnight and  
17       I thought that the likelihood of our getting together  
18       as a group was very slim. So I have to pay my tribute  
19       to the vision or optimism, foolheartiness as the  
20       Executive Secretary has chosen to call it, of the staff  
21       and thank you all and thank you for persisting.

22                        Now this is the third of a series of  
23        symposia which we have been holding; the first on  
24        cause and context, trying to see whether our own  
25        general perspective of the phenomenon is more or less  
26        in the right ball park. Second, on treatment; similarly  
27        to check our own senses, our own sense of feasibility  
28        and of course to be brought up to date on development.  
29        And the third on law enforcement has been called for  
30        essentially the same purpose. It is really to bring  
31        together people with experience and judgment we con-  
32        sider to be very valuable and give ourselves a sense  
33        of our bearings; satisfy ourselves that we at least



1 are identifying with the issues; of some sense of the  
2 relationship; some sense of where it is at so to speak;  
3 feasibility; what the alternatives are. You know, it  
4 is the same old pursuit. It is the pursuit of wisdom;  
5 the pursuit of a wise social policy and we can't talk  
6 to too many experienced and sightful people if we are  
7 to have any kind of a chance in making any kind of a  
8 constructive contribution.

9 I think that after a year and a half  
10 in this exercise we have developed a pretty realistic --  
11 I like to think a pretty realistic sense of our limita-  
12 tions and our limited possibility. We were given a  
13 couple of years at a certain point in the social history  
14 of this country and, indeed, the western world to make, of  
15 attempt to make a constructive contribution to thinking  
16 and orientation on the subject.

17 I think we have sort of seen as our  
18 best opportunity the attempt to put it into some per-  
19 spective; to make some contribution of public perception  
20 and understanding of the issues; of the nature and  
21 the role of law in this field; the other measures of  
22 social control and influence that are open. And so we  
23 are really concentrating on this attempted perspective  
24 and thinking through the issues as far as we can.

25 We would like to and we do leave the  
26 scene shortly, in a few months, and we would like to have  
27 done as much as we can to think through, to think the  
28 questions through. And of course this means thinking  
29 the concepts, the basic concepts and assumptions through  
30 as far as possible. And while we are gathering data and



1 we are hoping -- we have some 90 research projects -- we  
2 are hoping to contribute to knowledge. It is an ongoing  
3 -- this research work must be an ongoing process and  
4 it is only begun in certain areas if not in most of the  
5 areas concerned here. We hope we may have some valuable  
6 experience to pass on with respect to research, that is  
7 to say, research priority, methodology, limitations;  
8 but basically, I think we have to concentrate, we have  
9 to hope that we can -- having a little more time for  
10 reflection than the average legislator who meets with  
11 the average administrator, we hope that we may be of  
12 particular help in analyzing some of the basic concepts  
13 and in this field, of course, we start with the appro-  
14 priateness of the criminal law. Is there a legitimate  
15 role for the criminal law, and from there we attempt  
16 to develop the various issues of efficacy, cost benefit  
17 and having our eye as much as we can on alternatives.  
18 As we have indicated in the report, we see that the  
19 problem is going to develop --- society is trying to  
20 develop a wise social response which is many-faceted,  
21 and so we can't analyze any of these aspects of social  
22 control in isolation, of one from the other.

23 So we are really here to get the benefit  
24 of your perspective at this time on law, what it can  
25 do, whether it has a role, how far it has a role, what  
26 decisions may be made at various points of intervention,  
27 various defences, how effective is it being, is it at  
28 present with respect to the various objectives, stated  
29 or otherwise, and what the alternatives are, what are  
30 our choices in respect of criminal law; go with it as



1 it is, modify it, reduce objectives, cut our coat  
2 according to the cloth, abandon it in some areas alto-  
3 gether, you know. It is a matter of judgment with  
4 responsibility so we are really here, as I say, to get the  
5 benefit of your wisdom.

6 In the letters that went out to you we  
7 had mentioned 5 topics, the appropriateness of the use  
8 of the criminal law in controlling non-medical drug use,  
9 the effectiveness of existing law enforcement methods  
10 in meeting stated goals, alternatives to existing  
11 modality of criminal law enforcement, new development in  
12 law enforcement techniques, given the changing patterns  
13 of non-medical drug use, and alternatives to criminal law  
14 in control of psychotropic drugs.

15 I think the Interim Report which I trust  
16 you have all received, sufficiently indicates our sense  
17 of the issues so we have not thought it necessary to  
18 draw up a detailed agenda, but I think it is probably  
19 a good idea if we began with some discussion of the  
20 appropriateness of the criminal law in controlling non-  
21 medical drug use. We have had the benefit of a very  
22 substantial paper from Professor Paul Weiler which we  
23 read and are in the process of considering to which  
24 reference may be made today, but he does make a very  
25 careful analysis of this question and has a thesis which  
26 I think is provocative and which may well be used as a  
27 point of reference for discussion. The way I outlined  
28 the suggested topics here is, what is the evil to which  
29 the criminal law is directed in this field? I think we  
30 should attempt to clarify our assumptions on this point.



1 It is very difficult. We have been spending a good deal  
2 of time on it. Under that heading we have, I put first,  
3 harm to the individual to the user, physical effects,  
4 psychological effects. Are there any other sufficiently  
5 assumed under physical and psychological. Secondly,  
6 harm to society, what kind, what is the imperical  
7 evidence for it, is this a general question of morality  
8 which is not covered adequately by phisical, psychological  
9 harm, that is by adverse effects and their behavioural  
10 manifestations, for example, impaired driving, and in  
11 this area we have such complex notions, or lucid notions  
12 as personality, character, motivation, drive, goal,  
13 orientation, competitive spirit, the amotivational  
14 syndrome, and the like.

15 We made some brief reference to this con-  
16 cept of social harm in our Interim Report. We are  
17 attempting to think it through now and quite frankly  
18 without any breach of confidence, I might say it is  
19 extremely difficult. We may, as I said after one  
20 meeting recently, if we keep up our negative approach  
21 in discarding of old and respected concepts, we may end  
22 up being able to publish a report in the next month  
23 that should be quite short, the final report. So that  
24 gives a hint of how our thinking has been going. But  
25 Professor Weiler has in his paper confronted in a quite  
26 direct frontal way, the issue of whether it is  
27 appropriate for the criminal law to be applied to the support  
28 and enforcement of morality; the development, let us say  
29 of the kind of character that is thought to be necessary  
30 to man, our key institutions and our work life for



1 example. And in doing that he takes the Hart, he  
2 confronts the limitations of the Hart thesis. I'm not  
3 sure where he ends up in relation to Devlon but let  
4 him speak for himself on this.

5 Certainly we have to consider this. Of  
6 course this is apart from cost benefit, apart from  
7 methodology, we attempt in the Interim Report to define  
8 at an interim stage, some of the legitimate goals,  
9 legitimate objects of the criminal law.

10 Then I go on to ask these questions,  
11 still under the general questions, "is it appropriate?" --  
12 is the level in, one, a legitimate object of criminal law,  
13 is the level in, two, social harm, I already defined  
14 legitimate object of criminal law; and then we might  
15 proceed into this cost benefit analysis and we are  
16 fairly familiar, I think, with issues there. It is a  
17 matter really of reviewing our assumptions about the  
18 cost benefits in the light of such evidence as we have  
19 had individually brought to our attention in the last year  
20 or so, the changing scene. And then, I thought that I  
21 would be happy if we could direct some attention to the  
22 issue we have raised in the Interim Report, that is the  
23 future of what we call the possessional offence, the  
24 offence of use, in effect, the prohibition against use,  
25 against simple use as distinct from trafficking. We,  
26 of course, cast first doubts about it in our Interim  
27 Report. We made it, I think, fairly plain that we had  
28 grave reservations about it in this field, but at that  
29 stage we were not prepared without further reflection,  
30 advice and hopefully data, to recommend its elimination.



1 But we did urge a certain kind of approach on the part of  
2 law enforcement authorities. In other words, we wanted  
3 a controlled social experiment. There are several  
4 questions there and we can come to them, particularly  
5 alleged relationship between prohibition against simple  
6 possession for use and effective enforcement against  
7 trafficking, assuming that there can be effective enforce-  
8 ment against trafficking. This is another subject we  
9 have to look at. Then, can one make practical distinc-  
10 tions with respect to trafficking? This is, of course,  
11 a matter of great concern because of the nature of so  
12 called trafficking as trafficking is defined, in many of the  
13 marginal cases, the trafficker-user as within the defini-  
14 tion of under the law. We have suggested we can make a  
15 distinction. Others have questioned this. We would  
16 welcome advice on this. And then, methods, looking at  
17 methods of enforcement, are these special methods  
18 necessary? How Americans get by with the fewer procedural  
19 advantages, what would be the effect on enforcement of the  
20 elimination of any one or more of these special methods,  
21 which in this country --- writ of assistance, undercover  
22 agents, the whole range of physical intrusion.

23 Then we might get some perspective on the  
24 exercise of police discretion, just what form it is  
25 taking in this area today and the implications of it, not  
26 only in these areas but law enforcement generally, the whole  
27 significance of that, exercised discretion, and also  
28 possibly related to it, is there a non-penal role,  
29 education, counselling etc. which the police may exercise  
30 without prejudice in their law enforcement responsibility.



1 This is an important issue. It has come up in our  
2 hearings. Opinion has differed on it. It has differed  
3 between forces in Canada. This is our impression in  
4 certain areas, anyway, I suppose, to what extent the  
5 discretion of police prosecution does effectively  
6 circumscribe the legislation; what are the effective  
7 limits that can be opposed? What are the alternatives  
8 of criminalization of use, what other effective controls  
9 are there? And I suppose here we inevitably have to say  
10 something about civil commitment. We, of course, have  
11 to consider very carefully this question of compulsory  
12 treatment. It seems to be assumed that it is an  
13 alternative to criminal sanction, effective alternative,  
14 and we would welcome your perspective on that and any  
15 other issues which you think are pertinent. Indeed, you  
16 may not even think or you may not agree altogether with  
17 our sense that they are of relevant importance, the  
18 issues as disclosed in our Interim Report.

19 So we are very much in your hands and  
20 I visualize this as essentially an unstructured dis-  
21 cussion. When we have a group like this we are far  
22 better to give it its head. It is going to take it  
23 anyway in my experience and we also have a little  
24 check list which we cover when we are anxious about  
25 coverage but this gives you a sense of the kind of  
26 things that we like advice and perspective on.

27 I will just introduce members around  
28 the table going clockwise, Professor Quinney, Doctor  
29 Ralph Miller our research director, Professor Stewart Ryan  
30 of Queen's, Professor Lyn McDonald our research associate



1 on loan to us from McMaster, Mr. Ackroyd formerly of ---

2 MR. ACKROYD: Still.

3 THE CHAIRMAN: Still, excuse me. I  
4 thought you had retired to elder statesman. That was my  
5 information. We might have to take you in our payroll  
6 if I cost you your job. Professor John Edwards of the  
7 Centre of Criminology of the University of Toronto, and  
8 Sergeant Ken Paul from Halifax, Professor Michael  
9 Rosenthal from Texas and Professor John Kaplan from  
10 Stanford and Mr. Peter Stein of the Commission, Mr. Bob  
11 Solomon who has been doing research for Professor Hogarth  
12 on our imperical study on law enforcement, Mel Greene who  
13 is our research associate and Professor Hans Mohr of my  
14 faculty, Osgoode Hall Law School of York University,  
15 Professor John Hogarth of the same faculty --- now you'll  
16 see the full extent of the nepotism of the Commission,  
17 and Professor Weiler of the same faculty.

18 It is not my fault I happen to have so  
19 many experts in the field.

20 Professor Marie Andree Bertrand of the  
21 University of Montreal, Department of Criminology, and  
22 Dean Ian Campbell, Dean of Arts at Sir George Williams.  
23 He is not a criminologist, he is a political scientists,  
24 and sociologist, but he is acquiring an amateur experience  
25 with criminology because of the nature of his University  
26 and student body. He has been more preoccupied with cri-  
27 minal cases these days than proper subject matter. On  
28 my immediate right is Doctor Heinz Lehmann who is a  
29 Commissioner and a psychiatrist and Clinical Director of  
30 the Douglas Hospital. So he is all alone here to



1 represent the other pole of the dialectic process which  
2 has been going on for 18 months in the Commission between  
3 law and psychiatry and related studies. It is a friendly  
4 dialectic but very stimulating. And he is -- Heinz gives  
5 us our sense of reality on treatment. So that we have this  
6 uneasy situation in the Commission after we have demolished  
7 something we turn to Heinz and say "Well now, Heinz,  
8 tell us what we can do now?" And he says "Nothing".  
9 Very shocking.

10 So we have gone through a lot of traumatic  
11 experience of this kind and we are gradually acquiring  
12 some sense of reality, I guess.

13 Well then --- excuse me, on my left, the  
14 executive secretary, Mr. James Moore. I always forget  
15 people who I most depend upon, at least tend to.

16 Well, gentlemen, ladies and gentlemen,  
17 that is the picture so please, anyone who feels fit  
18 step to the centre of the ring.

19 PROFESSOR KAPLAN: All kinds of things  
20 occur to me. I am literally tempted beyond my powers  
21 to resist by the enormous list of things you read off.  
22 Being quite honest, I have something to say on all of  
23 them. I may be wrong but I have something to say. But  
24 the first thing, in terms of looking at the thing, is I  
25 would urge you to separate the heroin from marijuana.  
26 It is entirely, as you know, different issues but they  
27 are entirely different issues politically as well as any  
28 other way, and as far as heroin is concerned -- I hope  
29 to devote relatively little of what I have to say about  
30 that -- looking at the data, I would say treatment is



1 very little help and I can comment only -- I want to make  
2 clear, all of my comments are primarily on the American  
3 scene. The suspicion I have is that in Canada it is no  
4 different because you find the same thing repeated over and  
5 over again in widely dispersed areas of the United States.  
6 My guess is that Canada is having the same thing. There  
7 is no reason, for instance, why the American criminal  
8 justice system should be collapsed and the Canadian  
9 system should be in fine shape, and in fact I doubt  
10 if it is.

11 In any event, my guess is that the  
12 Canadian criminal justice is in fine shape.

13 THE CHAIRMAN: I should warn you that  
14 Professor Bertrand is the custodian of the quintessence  
15 of Canadian nationalism.

16 PROFESSOR KAPLAN: I can't blame here.

17 In any event, as far as heroin is con-  
18 cerned we see repeated all over that the treatment  
19 system, civil commitment isn't working. It is turning  
20 out to be a fraud, to be simple. Send people to nice  
21 prisons under the name of civil commitment. The prisons  
22 you send them to, by and large, are better than they  
23 would go to the criminal system but the difference is  
24 not that significant. To my mind, in view of the state  
25 of our present knowledge, maintenance systems are  
26 really the best hope in the short to medium term future.  
27 On heroin I would recommend, at least as far as the  
28 United States is concerned and probably Canada, that main-  
29 tenance on heroin itself be discouraged, indeed I would not  
30 recommend it at this time. It is conceivable that a



1 number of specific research projects could be embarked  
2 on on seeing what happens when you try to maintain  
3 people on heroin who have failed.

4 Yes? Go ahead, madam.

5 PROFESSOR BERTRAND: I was wondering if  
6 you wanted us to react to the comments right away, Mr.  
7 Chairman, or do we ---

8 THE CHAIRMAN: Probably we could -- I have  
9 a sense that Professor Kaplan is making a kind of summa-  
10 tion in his perspective, there. Maybe if we would let  
11 him ---

12 PROFESSOR KAPLAN: If you determine I am  
13 wrong, please say so that I won't waste time.

14 THE CHAIRMAN: We are not in a position  
15 to relieve you.

16 PROFESSOR KAPLAN: In any event, the way  
17 I see it, maintenance and specifically methadone types  
18 of maintenance are the best short to medium term,  
19 hope in methadone.

20 THE CHAIRMAN: Maintenance on heroin.

21 PROFESSOR KAPLAN: Maintenance on heroin  
22 at this stage, methadone and new methadone-like drugs  
23 are being developed. There is one being developed now  
24 that acts for 30 days instead of you know, 48 hours.  
25 That would be a sizeable help in the mechanics of the  
26 treatment programme. Indeed the long acting methadone-  
27 like drugs have been known for some while. It's just that  
28 no one has bothered to try it out and now they have been  
29 tried out in the States in experimental places.

30 Because of that I would advise against



1 being doctrinaire in saying "no criminal offence for  
2 the possession of heroin."

3 I essentially take the view that we know  
4 relatively little about what to do about heroin; or a  
5 statement cannot be made with great confidence. It may  
6 well be that arrest and indeed kinds of criminal treat-  
7 ment of heroin users may be a good feed into a mainten-  
8 ance programme.

9 DR. LEHMANN: Criminal treatment of heroin?

10 PROFESSOR KAPLAN: Arrest may be a good  
11 feed into a maintenance system.

12 Now I confess that there is one reason  
13 why I advocate this much far above what I have, you  
14 know, the intellectual justification I have given for  
15 it. It is simply that if you try to legalize possession  
16 of heroin at the same time as you try to do something  
17 very important in terms of marijuana you will be throwing  
18 out the baby with the bath. In other words, this  
19 Commission must, in the words of an absolutely brilliant  
20 proverb that I have never heard before, must cut its  
21 coat according to its cloth too. And I don't know,  
22 is that Canadian or English?

23 THE CHAIRMAN: No, it is probably of  
24 British origin if you haven't heard it before.

25 PROFESSOR KAPLAN: I have not heard it  
26 before but I can only say ---

27 THE CHAIRMAN: They are the ones that  
28 cut a lot of cloth.

29 PROFESSOR KAPLAN: But I would have to  
30 say, you know, that the main --- the coat that this



1 Commission has to concern itself with is marijuana.

2 PROFESSOR WEILER: Surely the alternatives  
3 are not polarized -- marijuana and heroin is a spectrum  
4 of drugs.

5 PROFESSOR KAPLAN: The two I am most  
6 worried about are marijuana and heroin for two different  
7 reasons; I am worried most about heroin because heroin  
8 can completely destroy the effectiveness of the Commi-  
9 sion's work simply because in fact no changes, or  
10 serious changes are going to be made in your heroin  
11 laws.

12 PROFESSOR WEILER: If politically they  
13 could be made would you still draw the same ---

14 PROFESSOR KAPLAN: I don't know; I really  
15 don't know.

16 DR. LEHMANN: Your approach is entirely  
17 pragmatic then.

18 PROFESSOR KAPLAN: Yes. I can only say  
19 that is the name of the game. Let me give you one  
20 further intimation on this issue.

21 THE CHAIRMAN: You set us a very bad  
22 example, Mr. Kaplan. Now you are telling us that we  
23 should -- shouldn't follow your intrepid example of  
24 the political implications ---

25 PROFESSOR KAPLAN: Strangely enough, I  
26 believe in moderation in all things. I believe in the  
27 marijuana area the issue is so terribly important and  
28 something can be done. You will not be beating your  
29 head against a stone wall in the marijuana area. You  
30 will be in the heroin area.



1 Now the one, just anecdote, I can give you,  
2 I speak all over the United States typically to  
3 medical groups and law enforcement. I take the hard  
4 ones myself. And not without effect. But in each  
5 group I speak to I get questioned, "What would you do  
6 about heroin?" Because I talk about only marijuana.  
7 The thing that struck me almost immediately is the  
8 question almost always came from an unfriendly source.  
9 It was asked for the very simple reason of discrediting  
10 what I had to say about marijuana.

11 MR. CAMPBELL: Putting the pragmatism  
12 aside for the moment, and looking at heroin as the drug  
13 and its effects, what is there in the nature of heroin  
14 addiction that is wrong in the sense that it would warrant  
15 the state to illegalize?

16 PROFESSOR KAPLAN: All right, but I don't  
17 want a two step aspect. Unless the drug is made very  
18 widely available you are going to have a black market  
19 developing and that black market is going to raise  
20 prices and produce the property crime because you are  
21 not going to make it freely available. That is the  
22 one possibility. And the alternative, if you do make it  
23 much more freely available then you have a massive  
24 public health problem.

25 MR. CAMPBELL: What is the nature of  
26 that problem?

27 PROFESSOR KAPLAN: Large numbers of  
28 people unable to work and just can't support themselves  
29 and this is an extremely -- well, I can only say seduc-  
30 tive drug.



1 DR. LEHMANN: Is it public health or  
2 an economic problem?

3 PROFESSOR KAPLAN: I would have to say --  
4 well, it's both really but I think it is more economic.  
5 It's economic -- it is the public health effects on  
6 the economic problem. In other words, there are people  
7 -- typically I don't think any -- if we made heroin  
8 very widely available, we would still probably have  
9 people using each others needles, have all sorts of  
10 other things, the public health disadvantages. I suspect  
11 also that people -- in other words, you would have all  
12 of the problems of major overdose caused by miscalcula-  
13 tion and this sort of thing. You would have major  
14 public health effects, but the major effects, I think,  
15 would be social and economical because heroin is a drug  
16 that typically is abused by most of the people taking it.

17 PROFESSOR WEILER: Is it that seductive  
18 that if you repeal its possession offence that you  
19 might have wide increase of the use of heroin?

20 PROFESSOR KAPLAN: No, I don't think so.  
21 I don't really think repealing the possession offence  
22 would do a great deal to make the heroin that much, you  
23 know, more available as far as public health is con-  
24 cerned. But the answer to that is repealing the possession  
25 offence does you not so much harm but it doesn't do you  
26 much good either. You are going to want these people --  
27 unless you make it very widely available.

28 PROFESSOR WEILER: You make it available  
29 to those people who become addicted.

30 PROFESSOR KAPLAN: The problem with that



1 is you get into the problems of policing which the British  
2 have found almost impossible to handle. The people come  
3 in, you have to come in three or four times a day to get  
4 your shot. If you give them the shots to take home of  
5 course they sell them. And this is -- I don't know if you  
6 have had occasion to talk to the people running the heroin  
7 maintenance clinics in England but if you talk to Tom  
8 (Buley), Griffith Edwards, etc. and you see it is just  
9 an enormous problem with heroin and what they do inter-  
10 estingly enough -- I don't know if you have had word from  
11 England on this.

12                   The thing that interested me most is the  
13 heroin maintenance by and large, are going over much  
14 more and more to methadone. That, although it is not  
15 written anywhere, it is the basic object to get people  
16 off heroin and get them on to methadone. At least that's  
17 the first step. After they get on methadone it seems to  
18 me that most people tend to forget them anyway.

19                   MR. CAMPBELL: Going back to my question  
20 I take it you see the addiction to heroin inevitably  
21 leading to non-productivity, to the individual simply  
22 staying more or less constantly in a euphoric state  
23 rather than achieving a state of drug balance?

24                   PROFESSOR KAPLAN? The impression I get  
25 is that there are people who can be addicted to heroin  
26 and be productive and this is true in England. But I  
27 would have to say that 85% or 90% who, I feel, are in  
28 fact not --- and then you have degrees, you have people  
29 producing must much less than they would otherwise, but  
30 compared to the drug that people always assert impairs



1 productivity, marijuana, the difference is laughable.  
2 Heroin, to a vastly great extent does interfere with  
3 productivity.

4 PROFESSOR BERTRAND: So that we must  
5 understand there are three categories of reason that  
6 really sort of not forcing you but invite you to put  
7 heroin in a pot. The first would be, if I understand, a  
8 political reason. The second would be failure of  
9 treatment approach and the third would be a sort of  
10 value judgment and the necessity of leading a productive  
11 life which is incompatible with being on heroin. Am I  
12 right?

13 PROFESSOR KAPLAN: Yes, except for the  
14 fact that I do not like to consider this as an impera-  
15 tive on an individual. In other words, I guess this  
16 leads to the next point that the Chairman mentioned,  
17 the role of law in this whole area.

18 DR. LEHMANN: May I point out one thing.  
19 I am still questioning the evidence for your statement  
20 which is made very strongly that, "heroin as compared  
21 to marijuana, of course, reduces productivity, there  
22 is no doubt about, very much more." Now the evidence  
23 we do have is mainly from black market heroin or the  
24 rather limited experience in Britain where the system  
25 is fairly new and these people had already been conditioned  
26 to rather unproductive existence first of all. The only  
27 medical evidence that one could adduce for such an  
28 assumption is --- that would be an inferential one. It  
29 is established that being dependent on heroin reduces  
30 sexual drive. If one then infers that without a certain



1 amount, a healthy amount of sexual drive one lacks  
2 social aggression and is therefore less productive, unless  
3 you assume this, you really have no evidence or very  
4 little to go on to claim that -- in fact you could  
5 actually make the other argument that people on heroin  
6 would function perhaps more productively than those  
7 on marijuana. Either could --- there is just no  
8 evidence.

9 PROFESSOR KAPLAN: You are right. There  
10 are not of these studies that I could cite, in other  
11 words, and I have not gone into any of the detail that  
12 I have gone into in marijuana literature, but I do know  
13 that the descriptions of heroin use by users are such  
14 that, you know, first of all ---

15 DR. LEHMANN: This heroin use is black  
16 market, poor stuff.

17 PROFESSOR KAPLAN: The descriptions of  
18 noddong on heroin, the description, essentially we do  
19 know that this tends to reduce all goal directed activity.

20 DR. MOHR: How do you explain the tremendous  
21 amount of (inaudible) to keep up the habit, adopt the  
22 goal directions, adopt the ability and effectiveness to  
23 perhaps, the social controls to overcome this.

24 PROFESSOR KAPLAN: I guess the way I  
25 would look at it is that for brief periods, yes if you  
26 have to get heroin, that is a goal and I will not say  
27 that it is not an all goal directed activity. Indeed if  
28 the goal directed activity involves getting myre heroin,  
29 indirectly or directly then, of course, you would have  
30 enormous ---



1 DR. MOHR: How do you determine the  
2 effectiveness?

3 PROFESSOR KAPLAN: If heroin is the  
4 payment, I suppose so.

5 DR. MOHR: But, in fact, the drug does  
6 not reduce this. Isn't there a control group of heroin  
7 users, the doctors and nurses who had access to heroin  
8 who hadn't been forced to support a habit in the black  
9 market?

10 PROFESSOR KAPLAN: As I understand it, a  
11 great majority of doctor cases have been morphine and  
12 demoral and there are relatively few heroin addicts  
13 among doctors.

14 DR. LEHMANN: That should not make any  
15 difference.

16 DR. MOHR: What is the difference?

17 DR. LEHMANN: Certainly between morphine  
18 and heroin are perhaps nonexistent. I would say that  
19 between demoral and heroin are minimal. They could  
20 almost be fatal.

21 DR. MOHR: And those people continue  
22 to be healthy and productive for lengthy periods.

23 DR. LEHMANN: Until the (licensing) body  
24 steps down.

25 PROFESSOR KAPLAN: But is that by the  
26 way -- do we not have a good study? I have looked for  
27 one and I have been unable --- I have looked -- heroin  
28 addicted doctors. The stories I have heard that you  
29 gradually get very marked deterioration.

30 DR. LEHMANN: Because they have to spend



1 so much time hustling and because it is so criminalized  
2 and they have to give up their integrity in order to  
3 survive. That is very demoralizing.

4 DR. MOHR: Do you mean hustling in the  
5 sense of misusing their sources, not hustling or buying  
6 on the street but ---

7 DR. LEHMANN: No, no --- but having their  
8 sources ---

9 DR. MOHR: (Inaudible)

10 DR. LEHMANN: Eventually they are reduced  
11 to stealing from medical bags.

12 THE CHAIRMAN: It is misappropriation.

13 DR. LEHMANN: There are on record, even  
14 very old records of one of the most famous German  
15 surgeons 40 years ago, 60 years ago was known for many  
16 years to be addicted to morphine and before every operation  
17 he would give himself a shot and he stayed on the same  
18 amount for many, many years and he wrote many books,  
19 he reshaped surgery as surgery was at the time and  
20 further there are other similar -- there is not much  
21 evidence that in any way is reliable or valid on what  
22 would --- that heroin is more destructive to motivational  
23 and productive life than marijuana. In fact we do have  
24 more evidence that it is physically less destructive  
25 than for marijuana.

26 PROFESSOR KAPLAN: That is true.

27 MR. CAMPBELL: If we were to hypothesize  
28 the principal effect of heroin, or let us say of some  
29 other drug "X" which is highly addictive and does not  
30 produce significant behavioural change, psychological



1 change but is addicting. What is wrong with the fact  
2 that it is addicting? Is there something in the fact  
3 of addiction which in itself is evil and would call for  
4 a social response?

5 PROFESSOR KAPLAN: My answer to that  
6 would be minimal. In other words, I can't conceive of  
7 an argument against, the simple argument against it is  
8 just that if anything happens that the supply is cut off  
9 you are in terrible trouble. But considering the  
10 priorities in the criminal system today and which I  
11 don't reject doing anything about, bearing in mind their  
12 evils on principal but as you say, that cutting one's  
13 coat according to one's cloth, that is the last thing  
14 that would bother me, if the only problem was addiction.  
15 I'm not convinced, as far as heroin is concerned, the very  
16 fact that you have to stop four times a day and get your  
17 fix may not be a problem in itself.

18 MR. ROSENTHAL: Why need it be a problem,  
19 assuming that this was a normal kind of thing. Is it  
20 really that much more of a problem if this was a normal  
21 kind of thing, everyday people trained how to do it.  
22 It is a little more of a problem taking an antibiotic  
23 four times a day. I give myself allergy shots once a  
24 week. I can do it four times a day and it would take  
25 only about 5 minutes. I don't know about the ritual ---

26 PROFESSOR KAPLAN: Insulin, of course.

27 MR. ROSENTHAL: Insulin every day.

28 PROFESSOR KAPLAN: I cannot say that  
29 that idea would offend me enormously. I really am,  
30 though, you know, it may very well be because I've



1 | looked into marijuana much more than heroin. I really  
2 | am very dubious about the idea of a sizeable percentage  
3 | of heroin users being able to maintain themselves in  
4 | normal productivity. Well, I may be wrong, you know,  
5 | I can't swear that. But the impression I get in terms  
6 | of -- you get some eposodic information that some  
7 | people can do it. You have of course street use  
8 | which you can distinguish. But after a while you get  
9 | a feeling for the kind of things that are caused by  
10 | the illegality, by other aspects of it and a kind of  
11 | feeling that, you know, is attributable in great part  
12 | to the drug.

13 | DR. LEHMANN: You are getting into the  
14 | political realm.

15 | PROFESSOR KAPLAN: That is the cause of  
16 | the political problem. The political problem I think  
17 | is more than enough to convince you gentlemen to ask  
18 | for further study on the heroin problem on the issue  
19 | of possession being a crime.

20 | THE CHAIRMAN: Professor Quinney?

21 | PROFESSOR QUINNEY: What bothers me about  
22 | making a different policy about heroin use and in the  
23 | argument that it does not lead to a productive life if  
24 | one uses heroin and then the problem of whether there  
25 | is evidence to show one does not lead a productive life  
26 | ignores the problem of a definition of what a productive  
27 | life is and we are using a certain definition of what  
28 | one is to be productive. Maybe what we are doing is  
29 | very destructive. What a heroin user is doing is much  
30 | more constructive, given the faith.



1 PROFESSOR KAPLAN: That is sort of the  
2 next issue I want to come to because what I would say  
3 is I reject really the Hart thesis and I reject the  
4 Devlin thesis. The thesis I would adopt is cutting  
5 one's coat according to one's cloth. In other words ---

6 PROFESSOR BERTRAND: Who is that?

7 THE CHAIRMAN: There is a copywrite on  
8 that.

9 PROFESSOR KAPLAN? Yes.

10 But that is the point. I don't know  
11 what kind of cloth you have up here but I suspect very  
12 strongly, except for being somewhat thicker than the cloth  
13 I find, and somewhat furrier just from looking at the  
14 snow around here, it is very similar to the cloth you  
15 will find ---

16 THE CHAIRMAN: Why should one consider  
17 making a suit of cloths at all in this case. You say you  
18 reject the Hart and Devlin thesis?

19 PROFESSOR KAPLAN: It seems to me that I  
20 do not reject in principle interfering with other people's  
21 lives and trying to direct them into the patterns of  
22 what I think the most valuable. I'm perfectly willing  
23 to do that. I do not abstain on the grounds of morality.  
24 If I could make or induce -- because you can't make  
25 people do anything very well but if I could induce most  
26 people who are now doing nothing and living on drugs  
27 to lead lives of productivity in the sense that they  
28 would be earning money honestly, decreasing the tax  
29 burden for everybody, solving some of the enormous  
30 social problems we have too, I would love to do it.



1                   Now the only area I know where you can  
2 really do this is in requiring motorcyclists to wear  
3 helmets. That is really just about the only way --  
4 case where I know where a rule for the betterment of  
5 an individual can be enforced and actually works, and  
6 interestingly enough we have jurisprudential speculations  
7 in the United States whether this has made proper use of  
8 the criminal sanction. There may be some other reasons,  
9 for instance in cyclamates. You know, if the law  
10 works, then it may very well be there is no reason not  
11 to have the law. It may well be we have made a mistake  
12 and indeed the fact that a law works hence it tempts  
13 people into passing stupid laws. But that's no reason  
14 why you should reject the idea -- for instance let's  
15 assume cyclamates were a health danger and let's assume  
16 that we are not willing to trust the citizenry to watch  
17 out for their own health. And to that end it's always  
18 been very interesting to me the people that are radical  
19 economists and always say that you should have various  
20 price fixing etc., because you cannot trust the people  
21 to buy carefully in terms of the economic area are very  
22 often most conservative -- very radical in the exact  
23 opposite sense in the health area and demand that we  
24 should try and make people or induce people to conform  
25 to our health norms. I take the view that in both cases  
26 we should try to induce people to conform to certain  
27 norms. But with the power that is available. Cyclamates  
28 I think is a good example. Cyclamates -- the  
29 government said "go away" and believe it or not, they  
30 went away.



1 I don't see anything wrong with this in  
2 principle but I just think that it rarely works in the  
3 areas we are talking about for very complicated reasons  
4 which I am sure are clear to you. But marijuana  
5 doesn't go away when you say go away. Heroin doesn't  
6 go away when you say go away. Okay.

7 So my view is essentially, if you can  
8 let the criminal law work in the area and really work  
9 you should go ahead and do it. I have no hesitation or  
10 compunction about it. Even if it means imposing my  
11 moral values on somebody else, that is the name of the  
12 game. I have no hesitation.

13 MR. EDWARDS: I wonder, Mr. Chairman, I've  
14 listened to Professor Kaplan and I have in mind views the  
15 Commission has already put on record in its Interim Report  
16 of seeking to formulize the appropriate criteria by  
17 which to somehow determine this conflict between self-  
18 satisfaction on the part of the individual and the  
19 insipient harm to society. I don't envy the Commission's  
20 task that it has before it in trying to, for the first  
21 time perhaps, enunciate what are the governing principles,  
22 having done so, then apply it to the particular problem  
23 that it faces. What I think the Commission has been  
24 asked to do is what we are going to have to do in  
25 other areas of the criminal law where the issue would  
26 be precisely the same.

27 Now what struck me particularly was the  
28 fact that the Commission has expressed this issue in  
29 terms that I would like perhaps to put to Professor  
30 Kaplan or to members of the Commission in trying to



1 identify what are these criteria. So far the emphasis  
2 seems to have been placed on the element of productivity  
3 as a judgment of whether heroin use or marijuana use  
4 or any of the other psychotropic drugs. In your Interim  
5 Report you assert, really the fundamental issues  
6 is this: Does non-medical drug use enhance or impair  
7 one's capacity for effective and satisfying life? That  
8 doesn't have to do essentially with productivity. What  
9 counts to the individual is its effect on vitality,  
10 self-development and self-realization. Later on you  
11 go on to say "A kind of understanding that will permit  
12 an individual to live wisely in harmony with himself and  
13 his environment" and yet again you talk about a sense  
14 of self worth.

15 Now if then what you are asking is what  
16 does the individual regard as living in harmony with  
17 himself, his notion of self-development and self-  
18 realization, becomes essentially an individualistic  
19 matter and obviously you are then leaning very heavily  
20 towards the consideration there is no apparent self-  
21 harm; there should be no prescription on certain forms  
22 of behaviour.

23 Later on in your report you take refuge  
24 in a very different concept and I would like to see  
25 how we have really resolved this. This is in paragraph  
26 4, 43 where you say "We also subscribe to the general  
27 proposition that society has the right to use the  
28 criminal law to protect itself from harm which truly  
29 ---". You know you use these (immortive epiphets) which  
30 really don't help, "which truly threatens its existence



1 as a politically, socially and economically viable  
2 order."

3 What does that mean? "For sustaining a  
4 creative and democratic process of human development  
5 and self-realization."

6 Are you taking refuge in two camps at one  
7 and the same time?

8 THE CHAIRMAN: Certainly.

9 MR. EDWARDS: Are you doing so at an  
10 interim stage of your recommendations?

11 THE CHAIRMAN: There are obviously some  
12 outer limits to the permissible indulgence of this  
13 self-development, self-realization. This self-develop-  
14 ment, self-realization may, for example, in some cases,  
15 be the development of one's full potential as an anar-  
16 chist and it may in the persons deep conviction reflect  
17 what they think they have a destiny and true vocation  
18 for. The state must impose some limit on that.

19 PROFESSOR BERTRAND: On what ground,  
20 though?

21 THE CHAIRMAN: On what ground is imposed  
22 limitation on anarchy?

23 PROFESSOR BERTRAND: Because what we  
24 have been invoking as, say, sources of limitations on  
25 the power of the state to prohibit to the individuals'  
26 choices and self-realization are somewhat taking in  
27 the values that you presuppose and assume in your  
28 introduction.

29 DR. LEHMANN: In that case it wouldn't  
30 be illegitimate to be an anarchist but anarchistic behaviour



1 should be under certain circumstances be regulated by  
2 law, is that it?

3 THE CHAIRMAN: There is no law against  
4 (pop) as yet. Now watch this political dialogue. My last  
5 question was not entirely rhetorical.

6 MR. EDWARDS: But don't the realities  
7 force us at least to bear in mind that the fulfill-  
8 ment of your original thesis of self-fulfillment, self-  
9 worth had to be restrained not in terms, possibly of  
10 the individual assessment, but really of the political  
11 society in which you are functioning. All of these  
12 views that I have just repeated as having been stated  
13 by the Commission essentially turned down in the last  
14 analysis to, who is it that makes the judgments; who is  
15 it that must prevail? Is it the individual with com-  
16 plete freedom or do we work within a society where  
17 there are certain governmental mechanisms where the  
18 ultimate choice rests in a democratic society with  
19 parliament, however inadequate, however misguided. What  
20 we are seeking here is to feed in perhaps more pertinent  
21 information upon which that judgment must rest. If  
22 you go back to the Hart and Devlin thesis, you go  
23 back to John Stuart Mill's exposition on the same problem  
24 and you are, as I am, left always with asking: What do  
25 these concepts mean? They are marvelous. They are ringing  
26 true. But if you really ask yourself, "What does this  
27 mean to a society composed as we are of individuals  
28 working in contact, in relation with others", in the  
29 last analysis you have to ask, is it society that decides  
30 through parliament or is it the individual within the



1 through parliament or is it the individual within the  
2 context of the criminal law who determines what is in  
3 his best interest? That to my mind is the basic  
4 question that you have got to resolve in relation to  
5 any one of the psychotropic drugs and whether it's in  
6 relation to possession or trafficking and the relation-  
7 ship between these.

8 DR. LEHMANN: Perhaps that is an existential  
9 dilemma that cannot be conceptualized. As you are  
10 saying you are wondering just where and obviously we  
11 are floating. The question is, is there a conceptual  
12 articulation to this or is it one of these given  
13 situations for human beings ---

14 PROFESSOR RYAN: Is it always simply a  
15 contrast between the individual as one individual and  
16 society as a whole or is there an intermediate phase in  
17 which we are concerned with the combined effect of  
18 collective action or a concurrent action of a large  
19 number of people acting in the same way. It may be that  
20 one heroin user or a thousand heroin users or ten  
21 thousand heroin users are a phenomenon which society  
22 can accept. But that a hundred thousand or ten million  
23 would be more than we could stand.

24 You say there is no evidence with regard  
25 to the use of heroin. This is a statement which I  
26 must confess takes me off base because people who have  
27 worked very closely with heroin addicts in, for example,  
28 our penal institutions, admittedly they are dealing  
29 with people who come into heroin through the criminal  
30 channels and many of them have had criminal associations



1 or are in fact engaged in criminal acts before they  
2 become heroin users. But they have uniformly  
3 expressed a view which you now say is not supported  
4 by evidence, that while you are on heroin you are  
5 generally speaking not strongly motivated to act in  
6 any way. It is not only the sexual urge that is in-  
7 hibited, that is only one of the urges. You do not  
8 have --- the appetites are all generally dulled including  
9 the appetite for eating which is one reason people who  
10 are on heroin steadily tend to suffer from malnutrition.

11 Now Mark (Huston) who has done a lot of  
12 work with these people has simply put it to me in one  
13 sentence: He said any number of heroin addicts are  
14 quite harmless helpless people. The number of people  
15 who can carry on a medical practice such as Dr. Lehmann  
16 suggest I would believe are very few. The only person  
17 whom I knew who was a physician was on morphine gave  
18 himself away by a gradual falling off in performance  
19 so that he began to lose his practice. There is on  
20 record the case of Bonningham who was a physician who  
21 was on heroin who became so helpless that he has allowed  
22 his wife to starve to death and he was just unable to  
23 induce himself to do anything about it. (Ebson), said  
24 simply, "a society of people who are addicted to heroin  
25 could not survive" and I think there is a great deal  
26 of evidence in spite of the denial here to suggest that  
27 that is true.

28 MR. CAMPBELL: Les us accept what you  
29 say as being true and let us say that the person who  
30 becomes addicted to heroin does lose motivation. Let



1 us make that assumption. Let us say then that we have  
2 a drug that is both addicting and detrimental to  
3 ordinary motivational pattern. One could at that  
4 point, as far as the criminal law is concerned, say  
5 "So what?" There are a great many things in society  
6 that have adverse effects on motivation. Prolonged  
7 alcohol use can affect motivation very adversely. Life  
8 in various parts of a society and in certain type of  
9 slums can affect motivation adversely. One could  
10 catalogue this indefinitely.

11 Now, does the fact that something, A,  
12 addicts, and B, affects motivation adversely warrant the  
13 use of criminal law to prevent it? Should we use the  
14 criminal law to prevent slums; should we use the  
15 criminal law to prevent the spread of a number of ideas  
16 current in society that do, I believe, lessen motivation  
17 in a conventional sense. There seem to be a fair number  
18 of ideas floating around in my university that oppose the  
19 ordinary goal oriented economic motivational society.  
20 Do these two thoughts, adverse effect on motivation and  
21 addiction warrant the use of criminal law?

22 MR. RYAN: Not necessarily. Some of  
23 the examples that you have cited are those in which I  
24 would prefer to see criminal law use rather than control  
25 of heroin, such as the prevention of slums. I would like  
26 to prosecute some landlords and they are convicted of  
27 one thing or another ---

28 THE CHAIRMAN: You would not prosecute  
29 the user though?

30 MR. RYAN: No.



1 THE CHAIRMAN: Shaw said poverty should  
2 be a crime.

3 MR. RYAN: Well Butler, I think, said  
4 that T.B. was a crime, in fact, we make it a crime. You  
5 have to go to a sanatarium; mental illness is a crime,  
6 you have to go to a mental hospital, in that sense. In  
7 other words, my point is that if you are going to have  
8 any controls you have to have sanctions. And how do  
9 you have controls without sanctions?

10 DR. LEHMANN: May I just clarify what  
11 I have said because you questioned very much and I  
12 suppose there may be several others here who are almost  
13 shocked about my statements about heroin. In the first  
14 place I am pragmatic enough by now, politically wise  
15 enough under the guidance of the Chairman, that I would  
16 not have said this type of thing in a public meeting.  
17 I would also be very scared to put this in writing, but  
18 personally I am convinced and, of course, among peers  
19 will always be prepared to defend the fact, that there  
20 is no evidence to the effect that you have reduced  
21 productivity with heroin. As you have mentioned, of  
22 course, as you pointed out yourself, Mr. Ryan, the dis-  
23 torted individual, say, came to heroin through crime and  
24 they have been criminalized through association with  
25 other heroin addicts and so on. This is just a sample  
26 which is not at all reliable. And there is very little  
27 if any evidence that can be put up to know that it  
28 reduces productivity. There are some records of those  
29 physicians for instance and others who were original and  
30 clever enough to, with a minimum of association, to



1 continue the habits and they were not reduced in  
2 productivity.

3 THE CHAIRMAN: Professor Mohr?

4 PROFESSOR MOHR: I would like to put a  
5 question to the gentleman from the police because he  
6 has held that there is lack of motivation, and so on.  
7 Is that how the police excuse an addict, as a helpless  
8 person who is unmotivated or as a very resourceful person  
9 who really knows how to go after things and so on. The  
10 direction to which this is applied may be questioned  
11 but I really can't see how he is helpless and unmotivated.

12 MR. ACKROYD: First of all my comment on  
13 that is that my field experience in relation to drugs  
14 ended about 15 years ago so my knowledge personally of  
15 addicts and dealing with addicts at that time was  
16 dealing with the heroin addict. I would think that the  
17 answer I could give you would only relate to people that  
18 I know. There is a good possibility that many people  
19 were using heroin that I did not know and I did not come  
20 into personal contact with, did not arrest in any way.  
21 If I told you about the people that I dealt with as  
22 heroin addicts personally, I either arrested them or  
23 they were informants of mine or something in that area,  
24 I would have to say that they lived mostly by con. I  
25 would say prostitution possibly supported 70% and I  
26 cannot validate those figures, the crime of theft, the  
27 crime of prostitution and break and enter, this type  
28 of thing. But I'm talking at that time of possibly  
29 between 75 and 100 people. I'm talking of the era  
30 of the 1950's. I do not see that picture today but



1 I'm not on the street today. My involvement with drugs  
2 in the last 3 years has almost separated some of my  
3 views from my fellow police officers because I have been  
4 attached to committees such as Project '69 and as I have  
5 quoted in '60 where I am the only police officer seated  
6 with many other agencies. I do not see this lack of  
7 productivity.

8 PROFESSOR MOHR: But even in crime do  
9 you see them as helpless? We may not agree here in terms  
10 of the nature of the activity. It is a crime. Are they  
11 resourceful in this?

12 MR. ACKROYD: I know many young people  
13 who are using drugs today in the universities who are  
14 very resourceful.

15 PROFESSOR MOHR: But even a criminal  
16 addict, is he resourceful towards getting what he  
17 wants because otherwise I would suggest he would be  
18 no problem to you. He is really just lying around  
19 and it is no problem to you, but I would suggest the  
20 amount of the property crime committed in this area suggests  
21 to me resourcefulness, all of the attributes needed to  
22 get the money to keep up the habit.

23 MR. ACKROYD: I have some strong feelings  
24 although I am not sure how much I could validate. I  
25 have said once publicly, and I did not know I was  
26 saying it publicly, I was at a meeting at our city hall  
27 of our co-ordinating committee on drugs. I am beginning  
28 to believe more and more strongly that as the base of  
29 any drug grows in our society, when we look at that base  
30 as a deviant group of young people, it is going to have



1 a greater effect on crime and I think this is happening  
2 in Toronto now. If you ask me to validate that state-  
3 ment I can only give you minor examples of personal  
4 knowledge. I do not think too much has been documented.  
5 We started to document some of it but it is a very  
6 difficult thing to document. Are you going to take the  
7 people you arrest and then question them and ask him  
8 to admit that he resorts to crime to get drugs, and how  
9 accurate are the answers? The parallel studies on alcohol  
10 indicated that is not too accurate. The average alcoholic  
11 does not like to admit to further deviant behaviour if  
12 he resorts to crime for alcohol. What kids are telling us  
13 is a great number of them are resorting to theft and  
14 break and enter to get enough money to buy drugs and even  
15 the articles they steal, and this is fairly prevalent -- we  
16 had 4 groups of young people roughly 13 to 20 something,  
17 21, 22, arrested in North York were all questioned  
18 separately, very openly admitted that the main purpose  
19 of breaking into between these 70 and 80 houses was to  
20 take fur coats and transistor radios to the local  
21 Harvey's Hamburger to deal it in for speed or acid or  
22 whatever they could pick up. I think in relation to  
23 drugs anyone who is going to look at it knows that the  
24 broader it grows, the more people that are using drugs,  
25 you will have to accept that it will have an effect on  
26 crime. I'm not saying because it is a specific drug.  
27 The same will happen with alcohol and you can prove that.

28 MR. QUINNEY: But could not the con-  
29 clusion then be to legalize heroin use if heroin use  
30 being illegal leads to property crimes to support a



1 \$200.00 a day habit, then should not heroin be available  
2 legally?

3 MR. ACKROYD: My only comment on that is  
4 that if you look at the effects of alcohol on society,  
5 just look at it in relation to crime and I made some  
6 statements recently and from my ball park figures, I  
7 would say between 65% to 70% of people who end up in the  
8 cells in Metropolitan Toronto are there because of  
9 some involvement with alcohol, either a victim,  
10 offender; the fact that 50% are charges on the Liquor  
11 Control Act.

12 MR. QUINNEY: Well then why not fact  
13 the issue why people are using alcohol, why do we have  
14 such a society that alcohol is a rational alternative  
15 to other kinds of productivity?

16 MR. ACKROYD: I would not object to that.  
17 I think it is a realistic thing to look at. But let us  
18 say we did legalize all drugs, what effect would it  
19 have on the criminal patterns of the cities. Maybe that  
20 is going to be an acceptable thing.

21 MR. CAMPBELL: When you speak of alcohol  
22 here those people go to jail because they commit crimes,  
23 not because they use alcohol. I agree with you 65%, 70%  
24 maybe more in some jurisdictions get involved in crime  
25 because they use alcohol. Fair enough. But we respond  
26 to those people because they break and enter or because  
27 they boost or whatever the criminal act may be. We  
28 do not respond to the fact, to their alcohol use as  
29 such. Now, why in the case of heroin for instance  
30 should be respond to the fact of heroin use rather than



1 the crime that follows from heroin? Why should we not  
2 simply pick up the hustler as a hustler, the booster  
3 as a booster, in heroin as we do with alcohol?

4 MR. ACKROYD: Well, first of all, I  
5 may have misled you in what I said. What I am saying  
6 first of all is half of the people we arrest -- for instance  
7 ball park figures 60,000 people arrested, 20,000 would  
8 be for common drunk. In other words, we are charging  
9 them for just being drunk in a public place and I am  
10 not saying I agree with that. I came out pretty  
11 strongly and said, you know, if you are concerned about  
12 this why do you always use the criminal process to  
13 deal with them?

14 MR. CAMPBELL: That is still the effect  
15 of alcohol use not the alcohol use per se that we are  
16 nailing them for.

17 MR. ACKROYD: Right.

18 MR. CAMPBELL: If you use alcohol, get  
19 drunk, vomit in the street, get into a fight we'll nail  
20 you and if you drink and don't fall down in the street,  
21 we won't, so I just come back to the same question of  
22 heroin. If you shoot a lot of heroin and nod off in  
23 the gutter and become a traffic hazard you could nail  
24 them. But why do we go back this one stage further to  
25 the fact of the heroin use and nail them for the fact  
26 of the use rather than the consequences? What justifies  
27 this?

28 PROFESSOR RYAN: I would suggest first of  
29 all you have to distinguish between the two drugs in  
30 this sense: the activity displayed that people speak of,



1 the ingenuity displayed and the criminal activity that  
2 is engaged in by heroin users or would be heroin users is  
3 engaged in because they want the drug and they can't  
4 get it otherwise. Now when they are on it they don't  
5 tend to commit crimes as a general rule, they are cool.  
6 This is one of the other reasons where I differ from  
7 Dr. Lehmann because they are not even subject to the  
8 appetites of, for example, hostile aggression, these  
9 things are all restricted, all these motivations are  
10 restricted so they tend not to commit crimes while  
11 they are under the influence of the drug. Under the  
12 influence of alcohol they do tend to commit crimes  
13 because of the effect of alcohol on them. That is,  
14 the alcohol generated crime is one thing. The heroin  
15 generated crime doesn't exist in the same way.

16 PROFESSOR WEILER: Isn't that perhaps a  
17 good reason for legalizing heroin? The result may not  
18 be cumulative, it may be that heroin may be substituted  
19 for alcohol. Why do we rule it out apriori?

20 PROFESSOR RYAN: The evidence is heroin is  
21 not substituted for alcohol by young people today, it's  
22 used in addition.

23 MR. ACKROYD: What were the results of,  
24 say, legalizing alcohol? As I understand it, immediately  
25 the same way, you know, crime rates did increase and  
26 the rate of alcoholics did increase.

27 DR. LEHMANN: When?

28 MR. ACKROYD: After alcohol was legalized.

29 THE CHAIRMAN: After prohibition.

30 DR. LEHMANN: After prohibition.



1 PROFESSOR KAPLAN: We have good data  
2 on this that has not been published.

3 THE CHAIRMAN: What does it show?

4 PROFESSOR KAPLAN: It shows just as I  
5 feared that alcohol complaints went up after the end  
6 of prohibition.

7 MR. CAMPBELL: Dr. Kaplan, let me just  
8 ask you about those statistics.

9 PROFESSOR KAPLAN: Cirrhosis levels, for  
10 instance, clearly went up after the end of prohibition.  
11 You see a dip during prohibition, a really perceptable  
12 dip during prohibition and it goes up after prohibition.  
13 It's very hard to get the figures but I have the paper  
14 involving the figures for public drunkenness.

15 DR. LEHMANN: And mental disease admission,  
16 mental disease, figures for mental disease went up.

17 PROFESSOR KAPLAN: A lot of figures went  
18 up after prohibition. Again, my only objection to  
19 prohibition was that our coat could be made out of that  
20 cloth.

21 MR. CAMPBELL: The one question I want to  
22 ask, I know the cirrhosis figures. Those are not a crime  
23 factor; that's a health factor. Are we able to correct  
24 for the fact that during something like prohibition, very  
25 often police activity against the drunk diminished  
26 often out of the sympathy of the police for the use of  
27 alcohol and their lack of sympathy for the law. You change  
28 the law to a more liberal one and the police respond by  
29 becoming tougher with the law that they know has a wider  
30 public support and hence you get more arrests, more



1 crimes known to the police and so on.

2 PROFESSOR KAPLAN: We looked up the  
3 papers, the newspapers, for San Francisco in 1920, the  
4 first year of prohibition, and they all reported the  
5 first New Year's Eve in history that wasn't full of  
6 the -- the drunk tank wasn't full and, you know, just  
7 read the newspapers that appeared you get the distinct  
8 impression then that there were many fewer drunks  
9 around in the streets. Well, the point is this may  
10 have some -- the drunkenness arrest clearly dropped  
11 during this period. Now I am doing some work on the  
12 assault figures there and I can only tell you -- you  
13 see we don't have all the years but it looks like  
14 there was a lower rate of assault during prohibition.

15 DR. MOHR: Did you look at the organized  
16 crime too?

17 PROFESSOR KAPLAN: Welll, believe me I  
18 am strongly against returning to prohibition as anybody  
19 simply because although you do find these public health  
20 problems, to my mind, in terms of the destruction of our  
21 government and organized crime and all kinds of things,  
22 you cannot match the prohibition period as a disaster.  
23 Don't get me wrong, I'm not a prohibitionist. On the  
24 other hand I think it's also fair to say that if it  
25 would work I would consider it very seriously. If it  
26 would work, if you really could have a society ---

27 DR. LEHMANN: Well now, couldn't it  
28 have worked? It is my hobby horse I am always riding  
29 very much alone, but I'm still not convinced that it  
30 couldn't have worked. Supposing it would have worked.



1 From the medical point of view there is no doubt  
2 whatsoever that I would immediately sign the pledge  
3 although I like very much to drink -- last night and so  
4 on -- but if I had to sign the pledge now, and I  
5 would, because the gain would be so tremendous. And  
6 then if you can gain so much, is it really impossible to  
7 have -- we always refer to prohibition as "that proved  
8 it couldn't be made to work." Now couldn't it?

9 PROFESSOR KAPLAN: It proved it couldn't  
10 be made in American society without a police state.

11 THE CHAIRMAN: This is a question we  
12 have to consider: What would be required to make a  
13 reasonably effective attempt or a reasonable attempt  
14 to effective enforcement of the present law on, say,  
15 against marijuana?

16 PROFESSOR KAPLAN: I've thought about  
17 that.

18 THE CHAIRMAN: We have to consider this  
19 and evaluate it.

20 PROFESSOR KAPLAN: There are three  
21 possibilities that could work, one of which is a police  
22 state within the borders and I think nothing short of  
23 that would work within the borders, simply because you  
24 would have to use entrapment on a massive scale; you  
25 would have to use uncontrolled searches. The people  
26 that deal in marijuana very often deal from ideological  
27 bases as well as various others and a very, very high  
28 level of conviction would be necessary to deter them.

29 PROFESSOR QUINNEY: It's the same as heroin,  
30 isn't it?



1 PROFESSOR KAPLAN: It's not the ideologi-  
2 cal problem. Heroin is a money problem.

3 THE CHAIRMAN: You've got much more  
4 of a pocket phenomenon of concentration of heroin.

5 PROFESSOR KAPLAN: You have the ever-  
6 lasting demand for heroin.

7 DR. LEHMANN: Supposing instead of  
8 entrapment, another way, rather despicable technique,  
9 but would you think it is equally unacceptable to have  
10 -- well, to give rewards for people as the customs  
11 people do?

12 PROFESSOR KAPLAN: Informers, the only  
13 difference between the informer and the entrapment ---

14 DR. LEHMANN: That would be the police  
15 state. They do that with customs.

16 MR. ROSENTHAL: One of the costs of  
17 making informants is, again, the lousy feeling people on  
18 the other side, people in the drug world have more loss  
19 of respect for what you are doing.

20 PROFESSOR KAPLAN: I would go further.

21 DR. LEHMANN: That's if it works.

22 PROFESSOR KAPLAN: It doesn't work  
23 because informers are very unreliable people, they lie.  
24 They frame people.

25 THE CHAIRMAN: They also run a very  
26 severe risk of death in the heroin business.

27 MR. CAMPBELL: What do the police say  
28 here?

29 MR. EDWARDS: Before Mr. Kaplan goes on  
30 would he kindly define what standards he is applying



1 for this notion of "when will it work?" To make it  
2 work he says there must be three different approaches  
3 and I would like to see some definition of what is the  
4 level of attainment of law observance.

5 Professor Kaplan is regarding the  
6 minimum or the optimum level. What does work mean?  
7 Then he goes on to describe the different ways of doing  
8 it.

9 MR. ROSENTHAL: Is there anything  
10 available -- I assume it is not but I just want to  
11 point out the problem. You read in the papers about  
12 black markets in food stuffs and luxury goods and some  
13 almost necessities in Russia, in Moscow, despite very  
14 stringent, from what I understand, efforts by the  
15 government in a typical totalitarian state, to wipe it out.  
16 Now I guess this gets to the question of what work  
17 means. It is a question of degree of control rather  
18 than elimination and I wish I knew more about the Moscow  
19 and Russian situation, about the Georgian farmers with  
20 their oranges selling them in Moscow because I think  
21 it may shed light on what is involved.

22 PROFESSOR KAPLAN: Not much of a police  
23 state. It may be that the Russians don't even have it,  
24 only the Chinese have that kind of police state.

25 DR. LEHMANN: Incidentally the R.C.M.P.  
26 told us the only country in the world where there  
27 really is no drug problem, they've eliminated it, not  
28 just controlled it. Red China.

29 PROFESSOR KAPLAN: Red China.

30 PROFESSOR RYAN: They are apparently ex-



1 porting heroin or opium.

2 DR. LEHMANN: That's no problem to them.

3 MR. EDWARDS: As far as the U.S.S.R. is  
4 concerned I have an official statement from their  
5 minister of health to the effect that there is no drug  
6 problem there.

7 PROFESSOR KAPLAN: That is typically  
8 what happens in every international ---

9 MR. EDWARDS: However, this is carrying  
10 stories about the drug traffickers and so on.

11 PROFESSOR KAPLAN: They also say they  
12 have no alcohol problem. I think Professor Edwards'  
13 comments points out -- of course, I am talking in the  
14 short hand here a very pragmatic one. When I mean  
15 work is where it reaches the situation where the costs  
16 of having the law and enforcing the law are less than  
17 the costs of another method of regulation. That's  
18 essentially what I mean.

19 THE CHAIRMAN: What about the results?  
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1 PROFESSOR KAPLAN: The point is if you  
2 are going to have a police state anyway then the mar-  
3 ginal cost of enforcing the marijuana laws or any drug  
4 laws are minimal because you have got informers every-  
5 where. You might as well have them tell you about  
6 drug use as well as political activity. And then you  
7 get as a benefit for almost no extra input, you get no  
8 drug use.

8 THE CHAIRMAN: That is your assumption,  
9 no drug use.

10 PROFESSOR KAPLAN: Or sufficiently  
11 little so that you can tolerate it.

12 THE CHAIRMAN: But seriously, that's  
13 the point. Could we describe, could we attempt to  
14 describe the degree of control or the characteristic  
15 of the control of cannabis use that would be regarded  
16 as acceptable or effective and prima facie justifying  
17 the use of the criminal law? Can you describe that?

18 PROFESSOR BERTRAND: May I just draw  
19 a comparison in the composition at this point to try  
20 to illustrate what we want. In murder cases the  
21 rate of arrest and sentencing is very high whereas --  
22 I don't know about Ontario, but in this state the  
23 rate of arrests for shoplifting is extremely low.  
24 Right? What would you consider an appropriate rate  
25 of control where you would say that in the case of  
26 marijuana use and marijuana trafficking the law works?

27 PROFESSOR KAPLAN: Well --- All right,  
28 I will answer the question, but that involves a very --  
29 a judgment as to how dangerous marijuana is and, you  
30 know, it's a very complicated judgment. I would say  
5%. Five per cent of the young population. If only  
5% of the young population.

PROFESSOR BERTRAND: Arrested and



1 prosecuted?

2 PROFESSOR KAPLAN: Oh no, no. If only  
3 5% of the young population used it I would then be  
4 able to tolerate a sizeable amount of police enforcement  
5 which I assume would arrest much lower than 5% of the  
6 young people. Indeed if I had to arrest 5% of the  
7 young people that would be -- but you must understand  
8 you keep results below a given figure if you arrest  
9 far fewer than that figure.

10 DR. LEHMANN: But isn't Professor  
11 Bertrand asking, if at the present time you would  
12 introduce police programme stepped up, when would you say  
13 "Yes, it works." For instan-e under what conditions  
14 would prohibition work?

15 PROFESSOR KAPLAN: In other words I  
16 misunderstood you. Well in that case if it meant actually  
17 catching and doing something it will of course be the  
18 function of what I do to them in addition that I catch  
19 them and give them a \$20.00 fine I could perhaps tolerate  
20 1% or 2% of the youth getting caught. If it means  
21 sending them to jail I believe I would not tolerate  
22 1/2 of 1% with respect to marijuana.

23 DR. LEHMANN: Under what conditions would  
24 you have said that prohibition would have worked?  
25 Suppose 5% or 10% would have continued to use alcohol.  
26 Would you have said well, prohibition worked?

27 PROFESSOR KAPLAN: No, because its side  
28 effects were so enormously damaging. That is the point.  
29 In other words, this is a very complicated calculus  
30 where in order to decide ---



1 DR. LEHMANN: But with prohibition was  
2 there not a rather -- I do not quite remember it but  
3 was there not a rather peculiar way of going about it?  
4 Everybody was laughing at it and having big fun and not  
5 quite even as we are doing it with marijuana now although  
6 it is somewhat similar, but certainly to think that a  
7 senator might be arrested and put in jail because he  
8 was on to the bottle was unthinkable, wasn't it? So  
9 they really never made any attempt to enforce it.

10 PROFESSOR KAPLAN: That is unfair. I  
11 do not think it is fair. Furthermore there was an  
12 attempt to enforce prohibition in the first 6 or 7  
13 years of prohibition.

14 DR. LEHMANN: A real attempt?

15 PROFESSOR KAPLAN: Yes, but the problem  
16 is that prohibition was mainly a trafficking offence. That  
17 is where almost all of it -- most people do not under-  
18 stand that although possession was technically against  
19 the law there were almost no cases of possession of  
20 alcohol being prosecuted, federal and in many states  
21 they didn't even have possession of alcohol as an offence  
22 and New York repealed that.

23 DR. LEHMANN: The vice model.

24 PROFESSOR KAPLAN: Exactly. And as  
25 indeed if they had not had this vice model prohibition  
26 would have collapsed long before it did because it  
27 was only the fact that by not criminalizing the users  
28 of alcohol that made it tolerable for as long as they  
29 did. The prohibition experience in America is just  
30 cultural. I recommend it. There are some marvelous



1 books on it. But it shows a complete breakdown in  
2 at least one area of the society.

3 MR. EDWARDS: Mr. Chairman, may I come  
4 back to what Professor Bertrand said and try and set  
5 this in a context which is perhaps more familiar. If  
6 we take theft as something that has traditionally been  
7 regarded as a crime and is proscription by the Criminal  
8 Code irrespective of the value of the properties that  
9 is the subject of the theft there is little doubt I  
10 think in most people's mind that the incidence of  
11 theft in existing society is wholly disproportionate  
12 to the level of theft that appears in the police  
13 sheets and which are processed through the criminal  
14 courts. If then we ask the question, when does the  
15 criminal law work, what is the level of control, minimal  
16 level of control that is deemed acceptable to continue the  
17 proscription of a particular kind of antisocial activity  
18 and I'm using theft as an example. In the case of  
19 theft I think we have to keep these various stages of  
20 visibility in our minds. What we are concerned with  
21 is the level of arrest and using that in relation to  
22 the known commission of cases of theft, then you have  
23 the criteria that too many people is the appropriate  
24 test for determining whether or not to continue the  
25 proscription of theft. But if you look at it in the  
26 broader sense of the suspected incidence of theft, the  
27 dark figure of deprivation of other people's property,  
28 then truly the proscription of theft is dependent not  
29 on the degree of control that is exercised through  
30 the criminal law but simply some innate objection to



1 the notion of depriving other people of their property.

2 If then we ask the same question in  
3 relation to marijuana use as to what is the appropriate  
4 level of control or when does the system work or when  
5 does it cease to work, I think we would be misleading  
6 ourselves if we were to seek to answer this solely by  
7 reference to the level of arrests and the processing  
8 of these cases through to conviction and to say, in  
9 effect, we are clearing up whether it is 2%, 20% or 90%  
10 and I think th- situation with regard to marijuana or  
11 indeed other forms of social activity cannot truly be  
12 answered simply in terms of the level of control exer-  
13 cised by the criminal law.

14 MR. ROSENTHAL: Absolutely, and I bring  
15 this up because I would like to go one step further  
16 to show how complicated this gets. Dr. Bertrand  
17 mentioned shoplifting and if you ask how much shop-  
18 lifting can be tolerated it would depend on the profit  
19 margin of the particular store that has been shoplifted.  
20 I think that is the real answer, what kind of ratio they  
21 are working on, what they can afford. It is a very  
22 complicated thing. So I think even with the most  
23 stringent controls, forget about -- I think you have,  
24 whether you are talking about the most dangerous drugs  
25 or the least dangerous drug, forget about elimination  
26 and you have, I think, one thing about the Interim Report  
27 as you have it is, I think you're talking realistically  
28 in terms of control rather than any -- I do not know  
29 how you put it, publicly, (inaudible) I think that is  
30 how you can talk about the question. That is the level



1 of control.

2 Dr. LeDain, if I could go further on  
3 this, I do not know enough about the political situation  
4 to really comment on it. This would be something you  
5 people would of course have to figure out and the  
6 second thing is also I am not as familiar as I should  
7 be with the Canadian drug situation. I think this is  
8 vitally important because it is going to affect the cost-  
9 benefit judgment, and I say judgment as an equation  
10 because that is what it is. But getting back to the  
11 heroin point, the opium point that we were talking  
12 about before and the question had been raised about  
13 legal supplies of heroin to addicts, aside from  
14 political consideration there may well may be such con-  
15 sideration, my judgment would be that if it can be  
16 avoided, and I will clarify what I mean, it would pro-  
17 bably be good not to legally supply heroin to addicts.  
18 But I think there should be a supplying and of course  
19 the details are so important to really determine how  
20 it is working out, longer acting opiates such as methadone  
21 and the reason methadone would not be the -- methadone  
22 would not be the only one, there would be more and  
23 more -- I think you are much better off to the extent  
24 that you get the balance you want if you can do it  
25 with the longer acting opiates. I think in terms of  
26 the likely effects, the most common effects, they are  
27 less likely to lead to the kind of problems you get  
28 with heroin on these several things. From what I  
29 have read and people I have talked to I think it is  
30 clear it is not inevitable that a person on heroin is



1 not going to be productive. But I do think with the  
2 shorter acting opiates, whether you're talking about  
3 heroin, morphine or demoral, you are increasing that  
4 risk and whether productivity is the goal or whether  
5 it is not I would assume it is sufficient, it is cer-  
6 tainly in the picture enough if you can get what you  
7 want some other way, why risk it? And that gets to  
8 the question, what kind of effect do you get from  
9 various types of supplying of methadone maintenance,  
10 stabilization, or whatever you want to call it, with a  
11 similar drug. This is going to vary. It will vary on  
12 the type of programme and the types of addicts you are  
13 dealing with and different types of programmes may  
14 yield different results even with a constant addict  
15 population, as you go just reducing crime, prostitution,  
16 this kind of thing.

17               Secondarily is there a goal of individual  
18 productivity for the addict? And you may have to do  
19 some balancing. I do not know the state of methadone  
20 programmes in Canada but it seems to me various types of  
21 programmes may yield different results and you have to  
22 play around with them. Again I say it is not just  
23 methadone. There are similar drugs. And you are not  
24 going to get anything perfect out of it. You may have  
25 to balance enough freedom with methadone dispensing to  
26 increase some risk of the spread of addiction against  
27 some level of property crime. You will have to deter-  
28 mine what is tolerable to you. And I guess in part it  
29 depends not only on the programme but the types of  
30 addicts you are dealing with, types of people you are



1 dealing with. Some addicts may be very well satisfied  
2 with, in effect, stabilization and other addicts may not want  
3 any at all and a third group of addicts all methadone  
4 may do is, in effect, give them a basic dose which they  
5 can supplement by illegal heroin but at least maybe he  
6 has cut down the amount of money that they have to steal.

7 This is very common we find in Texas  
8 that the methadone programme is reducing the cost of the  
9 habit.

10 PROFESSOR KAPLAN: If you do it right  
11 that should not happen.

12 DR. LEHMANN: But good methadone treatment  
13 will rule out heroin, but they will go to speed and  
14 alcohol and barbiturates. But if I may just mention  
15 what might be the pharmacological basis for the  
16 recommendation which I believe too that heroin should  
17 be discouraged and other opiates should be substitute,  
18 that heroin being short acting, it does produce intense  
19 rushes and the more intense the immediate pleasure is  
20 the more one is likely to be preoccupied with it.

21 MR. ROSENTHAL: I think that the long  
22 acting drugs are the ones that you should play around  
23 with unless you find that they are so unacceptable to  
24 so many that you are not getting anything with it.  
25 I should think that as long as you find this is making  
26 some dent in the problem, at some cost, of course, try  
27 to avoid dispensing shorter acting drugs.

28 PROFESSOR KAPLAN: I would urge to the  
29 Commission, lay off the jurisprudence. I notice here  
30 a design, a very sensible one to try to determine first



1 | what the standards should be, sort of broad questions  
2 | about what is the right of society to interfere with  
3 | an individual choice. I can only say that I've grappled  
4 | with these and tried very hard. I cannot make a very  
5 | good case for anyone principal because the area seems  
6 | really complicated. I can state a number of principals  
7 | in a sentence but the trouble is they are just not  
8 | satisfying. They all fall apart against my example,  
9 | like the motorcycle helmet. In the society where we  
10 | are committed to pay for the hospitalization of anybody  
11 | who injures himself if we can prevent them from injur-  
12 | ing themselves at very small costs then maybe we have  
13 | this duty.

14 |                   Now the realm of ideas is one area  
15 | where we have a very strong value, an almost sort of  
16 | built in confidence that any interference is going to  
17 | do more harm than good. But that is sort of almost --  
18 | we do that without thinking and I'm not even sure  
19 | that we really thought about it, we could decide some  
20 | ideas that we could prescribe. I would rather not enter the  
21 | field. The issue as I see it is, and this is what I mean  
22 | by whether a law works, comparing the situation under  
23 | the law with the situation under different law and seeing  
24 | in some sense which is better from the view of society  
25 | and I think in most of the cases interestingly enough  
26 | you will not have to draw the standards carefully for  
27 | what you mean by better. Just sort of look at it. In  
28 | other words, anybody looking at America's alcohol prob-  
29 | lem today and the problem of prohibition. I don't have  
30 | to tell you how to weight organized crime against cirrhosis



1 of the liver in the abstract. I'm just saying that  
2 look at it today. Everybody in the United States should  
3 look at it today as far as alcohol is concerned.

4 Now then I would like to get onto the  
5 marijuana situation because that is the area where I  
6 think you can do first of all the most good. I think  
7 it's the area that screams loudest for an improvement  
8 and I think it's the area where improvement comes most  
9 clearly.

10 PROFESSOR QUINNEY: Before you get into prac-  
11 tical basis, could I just say something about juris-  
12 prudence because we passed by the point I wanted to make  
13 and I suggest we don't give it up. There are problems when  
14 we get into the practical discussion. In practical dis-  
15 cussion -- I think when we are concerned about how  
16 effective law enforcement is it leads us away from the  
17 first question of whether or not we have any business  
18 controlling this. And I don't like to get into the  
19 discussion that the prior question should be controlling,  
20 should depend upon how effective law enforcement would  
21 be. It's like saying the United States should not be in  
22 Viet Nam because it can't win. You know, I think it's a  
23 moral question whether or not it should be there, it's  
24 not whether or not it can win.

25 MR. ROSENTHAL: I think it's a question  
26 they can't win.

27 PROFESSOR QUINNEY: I'm sorry for that. I  
28 think that policy should depend on that.

29 PROFESSOR KAPLAN: If we could win then  
30 I would grapple with your issue. I don't even have to



1 think about it. And the point is, essentially what you  
2 are asking people to do here is to make -- is abandon  
3 the method of the common law.

4 PROFESSOR WEILER: You identify juris-  
5 prudence with a notion that if you come up with a  
6 principal express in a sentence that says this is what you  
7 do and this is what you don't do. Surely any kind of  
8 reflection on the problem is necessary in order to  
9 establish some kind of framework that tells you "These  
10 are the kinds of benefits that you are looking for. These  
11 are the kinds of costs you are going to avoid." And  
12 secondly the reflection gives you some sense of the weight  
13 to be attached to different kinds of methods. Whether you  
14 agree with Mill that only harm to somebody else is the  
15 kind of thing that criminal law should be looking at,  
16 you can still accept the fact that that is a much more  
17 important kind of value that we are trying to protect  
18 and it may be worth more in the way of cost of law  
19 enforcement.

20 PROFESSOR KAPLAN: I doubt if Dr. Quinney  
21 would be happy with that.

22 PROFESSOR QUINNEY: One thing that bothers  
23 me though. I like the jurisprudence problem. But I  
24 don't think it's as simple as society versus the  
25 individual. It's kind of an assumption the law is some  
26 kind of an amorphous thing representing society. The  
27 law rather is a tool of those who have power and those  
28 who are in power have the right to impose their order  
29 and right now we have some ability here apparently to  
30 affect law to perpetuate our system of what is a productive



1 life. And I have a very, very negative nasty view of  
2 the law that it is little more than a political weapon  
3 to perpetuate a certain kind of system, call it  
4 capitalist or whatever you want. And I think Canada has  
5 a chance to break away from the United States which is  
6 U.S. capitalism in Canada by having a different kind of  
7 legal system that does not support that kind of system.  
8 So I am saying that law is not something amorphous  
9 representing the feelings of all the people. It represents  
10 a certain interest of what is the good life, that people  
11 should be productive, this kind of way, there should be  
12 that kind of economic system. And every law is a moral  
13 law. You are not going to get rid of the marijuana law  
14 by saying that is a moral law. Every law protects some  
15 kind of morality, property or what have you.

16 MR. EDWARDS: My difficulty, I think,  
17 with that is pursuing it to see where it gets you and  
18 I would ask both you and Professor Kaplan, are you  
19 prepared on that basis to urge -- again though we are  
20 here concerned with the non-medical use of drugs, I ask  
21 you to come back to the field of property offences.  
22 Are you prepared to urge on the thesis you have just  
23 propounded that the law of theft be removed from the  
24 criminal code or from any of the penal codes that you  
25 have in the United States? Because essentially it is  
26 there, isn't it, in order to protect private property?

27 PROFESSOR QUINNEY: Well, for one thing  
28 I would probably say yes. But I would also say that,  
29 create a kind of society where it is not necessary to  
30 steal from one another and you aren't going to create



1 that kind of society by capturing those that steal. The  
2 control issue is not the way of handling it.

3 PROFESSOR KAPLAN: Again that brings me  
4 to my second issue that I urge the Commission to avoid  
5 and that is talking about what kind of society we  
6 should have. In other words, if those two questions  
7 were necessary for the resolution of the most important  
8 thing you could do I would say, "Well, maybe you have  
9 to." I might add if you did you would get politically  
10 bloodied in a way that is impossible to conceive of  
11 and not only that you would probably be wrong. But much  
12 more important than that, if your issue is what to do  
13 about drugs, at least in the marijuana which I think  
14 is the major area you have to worry about here, that  
15 you don't have to resolve these devicive questions in  
16 order to -- in other words, on my extremely capitalist  
17 establishmentarian pro-American imperialist position  
18 we come out with a device that is every bit as radical  
19 as anything Dr.Quinney could conceive of in his most  
20 antiestablishment modes. So why do you have to , in  
21 some sense, destroy a sizeable part of whatever political  
22 following the Commission could get by first announcing  
23 that, well, it is our value judgments being imposed  
24 upon other people when you are going to end up in exactly  
25 the same places granted all of these assumptions.

26 PROFESSOR QUINNEY: I think your political  
27 or value system has produced drug addiction in the first  
28 place.

29 PROFESSOR RYAN: Comes the revolution,  
30 law and the state and drug use will wither away, it



1 won't be needed anymore. But this hasn't happened.  
2 But apart from that, the analogy between property  
3 offences and drug offences is in attack because we  
4 have managed to achieve the correlation between the  
5 offence of theft and the moral judgment that it is  
6 wrong to steal which we have not succeeded in achieving  
7 in a number of these regulatory offences in which you  
8 deprive people of the legal right to do things which  
9 they want to do for their own pleasure and their own  
10 satisfaction and, therefore, I suggest that the analogy  
11 between drug use and prohibition is more exact than  
12 the analogy between drug use and theft. And the  
13 analogy between prohibition and drug use is closer to  
14 the attempt to control gambling and prostitution. These  
15 are activities which people wish to engage in for their  
16 own satisfaction and as far as they can see they are  
17 not doing anybody any harm and in fact they probably  
18 could be carried on in many respects without doing any  
19 particular harm to any person. So when you steal you  
20 immediately do some harm to somebody which is readily  
21 recognizable.

22 MR. EDWARDS: Then the issue is one of  
23 harm rather than control?

24 PROFESSOR RYAN: That is all right.

25 MR. EDWARDS: There are those around the  
26 table who are urging the issue has to be determined on  
27 a matter of a level of control and the level of control  
28 it seems to me that the analogy between the misuse of  
29 drugs and the misuse of theft is one where obviously  
30 theft has ceased to be a proscription that is effectively



1 administered.

2 MR. ROSENTHAL: It should be determined  
3 on a level of control. I think all we are urging is  
4 the maximum you can shoot for if you decide you want to  
5 control is control, rather than elimination. I think  
6 you brought that up.

7 PROFESSOR RYAN: One thought before I  
8 close, and that is this: That the effectiveness of a  
9 criminal law depends not so much in itself on the degree  
10 of control but on the degree to which you can induce  
11 the population to accept the moral value which is  
12 implicit in the law and that is why theft has a value,  
13 a social value, law of theft, because generally speaking  
14 the population has accepted the principle that it is  
15 wrong to steal. And if we abolish the law of theft then  
16 your supermarket dealers who do take the amount of  
17 shoplifting into account would be -- their reckoning  
18 would be out of balance and this has been demonstrated  
19 by the experience, for example, in Denmark during World  
20 War II when the police went on strike.

21 PROFESSOR KAPLAN: All right, let me  
22 answer that.

23 PROFESSOR RYAN: There was an enormous  
24 rise in theft. And one other thought, when you have  
25 a breakdown as for example in a riot or in a catastrophe  
26 where a civil authority breaks down, you have an  
27 enormous increase in looting which is brought to an end  
28 when civil authority is restored. So theft depends  
29 on two things: The morality of theft depends on the  
30 fact that theft is an offence and it also depends on



1 | the fact that there is some enforcement.

2 |                   PROFESSOR KAPLAN: It is much more  
3 | complicated than that. The important difference be-  
4 | tween theft and the drug laws is what is the alternative  
5 | to the theft issue? We can just say -- I can just say  
6 | you repeal the law against theft and I sit with my  
7 | shotgun on my property and I shoot people. The alter-  
8 | native to the theft law, we don't have a licencing  
9 | model for theft. We don't have a sensible alternative  
10 | until the millennium comes when everybody wants to  
11 | give his property.

12 |                   THE CHAIRMAN: We could have a short  
13 | open season.

14 |                   PROFESSOR KAPLAN: Yes. What I say is  
15 | there is no practical alternative to the criminal law  
16 | in the theft area though you can modify it, you can  
17 | use warnings, use civil recovery in various areas but  
18 | in the drug area we happen to have a model which  
19 | happens to work a great deal better by almost any stan-  
20 | dard you can use in the marijuana area and I'd like to  
21 | go on and sort of focus on that model.

22 |                   THE CHAIRMAN: I would just like to  
23 | signal the presence of another guest, and that is  
24 | Professor Louis Schwartz. He apparently made a heroic  
25 | effort to get here.

26 |                   PROFESSOR SCHWARTZ: Half a guest. You  
27 | tried by snow to keep me away but you didn't succeed  
28 | entirely.

29 |                   THE CHAIRMAN: Good for you. You pro-  
30 | bably know many of the people here, Professor Schwartz.



1 PROFESSOR SCHWARTZ: Yes.

2 THE CHAIRMAN: I would just like to go  
3 around the room clockwise, Professor Quinney, Doctor  
4 Ralph Miller, Research Director, Professor Stuart Ryan  
5 doing research for us, Professor Lyn McDonald who is  
6 a Research Associate and Deputy Chief Ackroyd, Toronto  
7 Police and Professor John Edwards, Director of  
8 Criminology U. of T. and Sergeant Paul of Halifax Police  
9 Force and Professor Rosenthal, Professor John Kaplan,  
10 Peter Stein of the Commission, Mr. Bob Solomon who is  
11 doing research for the Commission, Mel Greene who is  
12 Research Associate to the Commission and Professor Hans  
13 Mohr, Professor John Hogarth and Professor Paul Weiler  
14 of the Osgoode Hall Law School of York University who  
15 is also doing research for the Commission and Professor  
16 Marie Andree Bertrand who is a member of the Commission,  
17 Dean Ian Campbell a member of the Commission and Doctor  
18 Heinz Lehmann also a member of the Commission, and Mr.  
19 James Moore, Executive Secretary.

20 PROFESSOR SCHWARTZ? I hope this does all of  
21 you more good than it obviously could for me. You must  
22 have heard this before and the second time around I'll  
23 remember the names.

24 MR. CAMPBELL: This may be a very simple  
25 minded thing I want to come back to but we were talking  
26 earlier about this hypothetical drug that (a) addicts  
27 and (b) fouls up motivation. I would like to come  
28 back to the police and see in their perspective what  
29 is there about a drug that accomplishes these two things.  
30 Produces addiction, markedly decreases motivation that



1 warrants the use of the criminal law against the use  
2 of that drug.

3 MR. ACKROYD: I'm not sure I'm qualified  
4 to answer that. As I say, I think the problem that the  
5 police officer has is what degree of enforcement the  
6 problems of the discretionary power of the police, all  
7 of these seem to be the problems that I have to focus  
8 on as a police officer. At a rock festival what do I  
9 do? I'm darned if I do and I'm darned if I don't in  
10 the approach that I take. I'm not sure that I'm  
11 qualified to talk in the areas of what effect it has  
12 on the person as far as his motivation and so on. I did  
13 make some statements earlier, I said -- I thought I had  
14 some definite handles on it when I was a field detective  
15 and when I was dealing with 100 heroin addicts I  
16 thought I could have some pretty definite statements.  
17 Today I'm dealing with a different type of population.  
18 I'm not dealing with basically a criminal element, I'm  
19 dealing with kids from all walks of life. I'm dealing  
20 with young people from good homes, medium homes, in fact  
21 more in that area than I see in the lower class.

22 MR. CAMPBELL: Leaving aside the fact  
23 that these people were boosters or prostitutes, was  
24 there anything about them that you feel makes the  
25 criminal law called upon as to apply the criminal law  
26 against?

27 MR. ACKROYD: The only place I can see  
28 the criminal law may have some effect and her is, what  
29 deterrent is it? I think there is two approaches, one,  
30 what is the deterrent to it and what is the criminal law



1 | doing in relation to drugs? In other words, the fact  
2 | there are people being arrested and some drugs are being  
3 | ceased and thjs type of thing but basically, what effect  
4 | is if having as a deterrent?

5 |               THE CHAIRMAN: What is your own view of  
6 | that and also, Sergeant Paul, what is your own view of  
7 | the relative effectiveness of the law in Canada at this  
8 | time on, let's say, the use of cannabis?

9 |               MR. ACKROYD: I think I -- I'd like to  
10 | hear what the other gentleman says. My feelings are,  
11 | of course, on both sides. There is evidence in the  
12 | statements that it is not having the desired effects and  
13 | that the use of cannabis is growing and there seems to  
14 | be more using it, and on the other hand, you know, I look  
15 | some of the studies of the Alcoholic and Drug Research  
16 | Foundation of Ontario and if they are accurate I see  
17 | figures like the first two categories of not using or  
18 | quitting the use of cannabis in fear of the law or in  
19 | fear of arrest, it did have effect. So I really see it  
20 | two ways. I see, yes, the law must be acting as some  
21 | deterrent and what would happen if it was legalized and I  
22 | have my feeling and my crystal ball may be kind of hazy.  
23 | I feel that if marijuana was legalized tomorrow it would  
24 | grow fairly rapidly.

25 |               DR. LEHMANN: Just like alcohol, to  
26 | 80% of the population?

27 |               MR. ACKROYD: As I said my crystal ball  
28 | is rather hazy.

29 |               MR. PAUL: Well I think it would grow  
30 | anyway. This is the trend, it is growing anyway.



1 PROFESSOR SCHWARTZ: Mr. Chairman, may I  
2 ask a question. It is a question of criminal law and  
3 control. Has any discrimination been made to this point  
4 as to the utility against suppliers, those who depend  
5 upon it and other people?

6 THE CHAIRMAN: We have not actually  
7 talked about that. We would be interested to have your  
8 view on that, Sergeant Paul, what is your impression?  
9 How effective is the law at present being with respect  
10 to cannabis use and trafficking? What would be the  
11 effect of the relaxation of the law?

12 MR. APUL: It is difficult to answer  
13 really. I think that it is going to grow regardless.  
14 This is the trend you see. For instance, I can say  
15 3 years ago we did not have a problem. Now we do. We  
16 don't have a heroin problem but it is starting. I feel  
17 that with the relaxation of it, I don't think it will esca-  
18 late to any greater extent to what it already has.

19 DR. LEHMANN: You mean the relaxation?

20 MR. PAUL: The relaxation of the cannabis  
21 law.

22 THE CHAIRMAN: It would not increase?

23 MR. PAUL: I do not think it will. I  
24 really don't. Because I see it is growing regardless.

25 DR. LEHMANN: But then you would not  
26 agree with Mr. Ackroyd who feels that it would grow  
27 much more rapidly?

28 THE CHAIRMAN: In other words, as I  
29 understand your view, Sergeant Paul, you do not think  
30 the law is having any real effect?



1 MR. PAUL: No, I say that the law is not  
2 having the desired effect.

3 THE CHAIRMAN: But if there would not  
4 be any increase or acceleration in the rate of growth  
5 after relaxation, the implication is that the law is  
6 having relatively little effect on the control of use.

7 MR. EDWARDS: Mr. Chairman, I would like  
8 to ask if there is a policy of the police department  
9 with regard to enforcement of the law. If so, what is  
10 it? Because it must have some relationship to its use,  
11 abuse, and enforcement or non-enforcement of the law.

12 MR. PAUL: In other words, you are asking  
13 what is the policy?

14 MR. EDWARDS: If there is a policy, what is it  
15 because presumably your interpretation of the situation is  
16 in part related to the way in which the criminal law is  
17 administered in the jurisdiction in which the police  
18 department and its effects has responsibility.

19 MR. PAUL: Well yes, if it is the law  
20 we enforce it.

21 PROFESSOR BERTRAND: If you see cases  
22 of possession you, say, first possession and first arrest  
23 and if the youngster or teenager is not known to the  
24 police and has not been charged before, you would  
25 proceed to arrest?

26 MR. PAUL: This is the general policy  
27 that has followed. If you pick a person up and he is  
28 in possession, you automatically charge him.

29 MR. ROSENTHAL: Do you have much affirmative  
30 policy, sort of making cases, informants, undercover agents?



1 MR. PAUL: No, we do not use entrapment.  
2 It's an expensive operation.

3 PROFESSOR RYAN: I would not entirely  
4 believe it is not used in this country. It is used by the  
5 R.C.M.P. extensively.

6 I must say, Mr. Chairman, dealing with  
7 this question of policy, recent newspapers show that  
8 the number of arrests for drug offences have risen  
9 very sharply and it is now over the rate of 1,000 a  
10 month throughout Canada.

11 THE CHAIRMAN: Does that reflect activity  
12 or enforcement policy?

13 MR. PAUL: I think you will find too, your  
14 arrest rate will be higher due to the fact that your  
15 local police are becoming more involved in the drug  
16 field and I think this will help escalate your figures.

17 MR. CAMPBELL: Sergeant Paul, is your  
18 position here that this law because of its very nature  
19 is not a deterrent, or could it be made a deterrent?  
20 Could it be made to work if the police were given  
21 additional resources and additional powers and is it not  
22 working because you are handicapped at making it work?

23 MR. PAUL: I think that is part of it.  
24 It is difficult to say that more stringent rules or  
25 whatever you wish to apply to the police to attempt  
26 to get it to work. What are you thinking of, what do  
27 you think should be given to the police?

28 MR. CAMPBELL: Well let us say we give  
29 you 100 men in Halifax, 100 capable men and said "Get  
30 this law enforced, stop this thing right now"?



1 MR. PAUL: Yes, I think we could with  
2 additional resources make some progress into it.

3 MR. ROSENTHAL: I would like to know --  
4 you said being handicapped was part of it. Is it just  
5 in terms of manpower or --

6 MR. PAUL: Manpower, yes. You see with  
7 the local police you do not have writ of assistance.  
8 You just do not have them and so it means that, let us  
9 say, we get information to the effect that a house has  
10 a quantity of cannabis. It means that we have to go  
11 to the magistrate if we have one available. It may  
12 take as long as 4 hours before we get the search warrant.  
13 By the time we get into the house the stuff is gone.  
14 I have watched people shooting, aye? I attempted to  
15 get somebody from the Royal Canadian Mounted Police with  
16 a writ while I had the place under observation. Well it  
17 just meant that it was game over. By that time we could  
18 not get anybody and so I gried to get one of our fellows  
19 to try to get ahold of the magistrate to give us one  
20 so we could enter and by then everything was over.

21 MR. ROSENTHAL: Dr. LeDain, does the  
22 Commission have any rough ideas, any breakdown as to the  
23 cases, any breakdown -- let us assume that X number of  
24 the percentage of the searches are made on writs of  
25 assistance by the R.C.M.P. Has anybody done a breakdown on  
26 the sort of percentage of cases that could be made through  
27 a magistrate without the writs of assistance? I want to  
28 find out how important they are.

29 THE CHAIRMAN: Professor Hogarth is doing  
30 a study on law enforcement. Have you got any light on



1 on that, John?

2 MR. HOGARTH: We have the advantage of having  
3 a document that must be required by the police officers  
4 to do a search (inaudible) and we have a list in the  
5 three major cities in the country and also the number  
6 of searches under writ of assistance. But there was  
7 a policy initiated here, a policy directive half-way  
8 through 1970 which has altered the picture somewhat.  
9 Police officers are now instructed, R.C.M.P. officers  
10 are now instructed not to rely exclusively on writs of  
11 assistance, blanket search warrants, but rather when  
12 circumstances seem to indicate the need of a search  
13 warrant. And the result of that has been less reliance  
14 on the writs of assistance.

15 MR. ROSENTHAL: Has this created problems  
16 for the R.C.M.P.?

17 PROFESSOR HOGARTH: No, there are lots of  
18 writs around. Nearly every search of a dwelling, probably,  
19 is under a writ.

20 THE CHAIRMAN: Nearly every one?

21 PROFESSOR HOGARTH: Nearly every one. And  
22 on this -- Professor Kaplan's discussion of a police  
23 state, I think Sergeant Paul quite appropriately stated  
24 that he would like to know what additional powers you  
25 could give to the police they don't already have. And  
26 that is the general summary of police opinion in this  
27 country. There really isn't a view among police officers  
28 that they need additional powers except for manpower.

29 PROFESSOR KAPLAN: What about the ability  
30 to stop anyone on the street that happens to have long



1 | hair and search them?

2 |                   PROFESSOR HOGARTH: That is done now.

3 |                   DR. LEHMANN: Could I make a somewhat  
4 | empty statement here, being the only one who really  
5 | hasn't been involved with law but I'm very troubled  
6 | by Seargeant Paul's statement. He very clearly said  
7 | that in his opinion, and he has had some experience,  
8 | it wouldn't make any difference whether you do continue  
9 | to use police powers against unless they had more help  
10 | and he made a very good point there, that unless you  
11 | have a writ of assistance you just can't get any conviction.  
12 | Because, of course, you see them shooting and they go  
13 | and put it down the toilet or give it to somebody else.  
14 | That would then mean -- or am I simplifying the issue too  
15 | much -- that you either have a police state or you don't.  
16 | And if you don't have a police state you might as well  
17 | forget about any kind of drug regulation.

18 |                   PROFESSOR KAPLAN: I'm not positive it  
19 | goes that far. There is another fact I want to throw  
20 | into the hopper. In California, which is approximately  
21 | the size of Canada, population size, we have -- we  
22 | have not hit the top of the system -- saturated the system  
23 | in the marijuana area. Fifty -thousand marijuana arrests  
24 | a year in California for the last 3 years. Marijuana  
25 | use has kept escalating, and what's happened is the  
26 | system just can't hold anymore. So in certain areas  
27 | in California the police have just started turning  
28 | loose. Even when they catch people with marijuana  
29 | they just -- not policy or anything -- they just know  
30 | through police channels when you come in with a kid



1 with 2 marijuana cigarettes you get razzed at the  
2 station house. You know, all sorts of informal  
3 pressures are working and there are now several clear  
4 marijuana using (enclaves) in California where you  
5 can walk down the street with a marijuana cigarette  
6 and essentially fear no arrest.

7 DR. LEHMANN: If it's only a question of  
8 time then that will apply to any drug because that  
9 applies of course to any drugs.

10 PROFESSOR KAPLAN: No, I don't think so  
11 for this reason: My view is that heroin will never  
12 be as popular as marijuana.

13 DR. LEHMANN: You say that?

14 PROFESSOR KAPLAN: I can't prove it. I don't  
15 think marijuana will ever be as popular as alcohol.

16 DR. LEHMANN: Well, again I doubt ---

17 PROFESSOR KAPLAN: I am living in a  
18 culture where they are both freely available and there  
19 are still people that use alcohol more than marijuana.  
20 You understand the figures are 91% and 70%. Seventy  
21 per cent of my Stanford students have used marijuana  
22 and 45% use it regularly. About 65% use alcohol reg-  
23 larly.

24 DR. LEHMANN: If we come back to the  
25 principle there is -- nobody knows really whether other  
26 drugs wouldn't become very popular and so on. But if  
27 enforcement of drug laws requires writ of assistance,  
28 stopping people on the street for a reasonable suspicion,  
29 whatever that means. Well then it is just bursting in  
30 and perhaps having to choke people before they can



1 | swallow their supply, otherwise it would be useless.  
2 | Well then, we have to have some penalty, some very  
3 | clear cut choice. Either we choose a police state or  
4 | we choose not to have any law enforcement.

5 |               MR. ROSENTHAL: I don't think that has  
6 | to be the choice. Maybe it should be regulated, mari-  
7 | juana, in the manner somewhat similar to alcohol. But  
8 | it seems to me that even if you don't go that far there  
9 | are additional choices, a vice model of choices that  
10 | do cut the costs somewhat and which do leave you with  
11 | different levels of control, not the greatest level of  
12 | control, but some sort of balancing of the various  
13 | things we want which are to a large extent inconsistent.

14 |               PROFESSOR KAPLAN: In other words, the  
15 | sergeant is talking about the possessor.

16 |               DR. LEHMANN: I see.

17 |               PROFESSOR KAPLAN: And trafficking.

18 |               DR. LEHMANN: Oh yes, don't the police --  
19 | I don't want to speak for you but I've heard from law  
20 | enforcement officers the argument that unless you have  
21 | a possession charge you can't get traffickers or it is  
22 | almost impossible. This would be the next step in  
23 | the argument.

24 |               MR. PAUL: This would be correct to some  
25 | extent I would say. I would say you definitely need  
26 | possession for the purpose.

27 |               THE CHAIRMAN: Of trafficking?

28 |               MR. PAUL: Right.

29 |               PROFESSOR WEILER: How much difference  
30 | would it make if you repeal the possession laws?



1 THE CHAIRMAN: Simple possession?

2 MR. PAUL: Simple possession -- I don't  
3 think we need it as much as we would require --

4 PROFESSOR WEILER: Like for instance the  
5 amphetamines, do you find it more difficult to enforce  
6 these laws where you don't have possession?

7 MR. PAUL: One particular drug, if we  
8 want to start to deal with the individual drugs, one  
9 drug that I would like to see simple possession as  
10 an offence is speed.

11 PROFESSOR WEILER: Why?

12 MR. PAUL: Well, we find that our major  
13 problem is speed. So you get a speed freak if you wish,  
14 call him that, all right, he laughs at you. There is  
15 just no offence. You can sit and watch him playing  
16 with it.

17 THE CHAIRMAN: Do you try to enforce the  
18 law against trafficking in amphetamines?

19 MR. PAUL: Yes, we do. But again, as I  
20 say, as somebody has mentioned, entrapment, this appears  
21 to be the only way that you can get at him, the only  
22 way. For instance, the undercover operation going in  
23 the city of Halifax last year, every person that was ap-  
24 prehended by that undercover operation was a trafficker,  
25 a known trafficker to us. We knew they had been  
26 trafficking and there was nobody picked up in that  
27 particular ---

28 THE CHAIRMAN: Trafficking in amphetamines?

29 MR. PAUL: They were, pardon me,  
30 trafficking in, like, cannabis and dangerous drugs, LSD.



1 THE CHAIRMAN: But you do try to get at  
2 the illicit source of amphetamines?

3 MR. PAUL: We do, yes.

4 THE CHAIRMAN: What kind of success have  
5 you had?

6 MR. PAUL: Well, pretty well nil.

7 THE CHAIRMAN: Why is that?

8 PROFESSOR RYAN: I think Professor Hogarth's  
9 statistics will show there are very few convictions for  
10 the control drugs for trafficking.

11 THE CHAIRMAN: What difference would  
12 it make to your definition of trafficking in speed if  
13 you were able to arrest the user?

14 MR. PAUL: It would make the difference  
15 that we could get at the trafficker in this manner.

16 DR. LEHMANN: In what way?

17 MR. PAUL: You know the person is  
18 trafficking, you can't get him for trafficking so you  
19 get him for possession.

20 DR. LEHMANN: I see.

21 PROFESSOR KAPLAN: The other way is you  
22 squeeze him, you say turn in your supply or boom.  
23 Interestingly enough I had a study about this and I  
24 talked about it in my book where I sent a student out  
25 and said "Find out from the police department how much  
26 help it is to have the traffic -- in getting the trafficker  
27 to be able to squeeze the possessor." And he found  
28 out interestingly enough from a sample of people  
29 arrested that in 95% of the cases they didn't even  
30 question the people arrested as to where they got it.



1 This was marijuana. But, you know, this is the classic  
2 case where the user is a criminal. Apparently, at least  
3 in the United States, the system is so overloaded that  
4 you don't even have time to question the user typically.  
5 In addition, once you question him all you find out  
6 is who is selling it. But by and large the police know  
7 that from people or undercover agents anyway. The  
8 problem is making the case and for that you have to use  
9 either search warrant or entrapment and there is just  
10 no two ways about it.

11 DR. LEHMANN: The possession charge?

12 PROFESSOR KAPLAN: The point is typically  
13 when you catch the trafficker you catch him with 10  
14 or 20 pounds and I just don't think it's right to talk  
15 about that in the sense of possession the same way as,  
16 you know ---

17 PROFESSOR WEILER: Possession for the  
18 purpose of trafficking then?

19 PROFESSOR KAPLAN: Or you just have to  
20 say possession of over a pound.

21 MR. ROSENTHAL: As far as the States are  
22 concerned and the extent to which the user is used by  
23 the police, marijuana there may be a difference than some  
24 of the stronger drugs, the police may -- heroin may use  
25 the user more and possibly with speed and acid in the  
26 States. The second thing is this: I think the worst  
27 situation is not just getting information from the  
28 user and squeezing him to get that but making the user  
29 an agent, act to make cases for you. Now, worse  
30 in this sense -- not only have you -- as far as the



1 individual user is concerned perhaps driven him in some  
2 ways more deeply -- or not separated him but kept him  
3 at the same in terms of his environment with drug  
4 traffic but from a point of view of costs, forgetting  
5 about the effect on him, right or wrong at least many  
6 young people in the States feel, and I feel that way  
7 too, that when you are talking about drug crimes  
8 although certainly they can have ramifications on  
9 society and on other people, the effect predominantly  
10 is on the person himself, the user himself, there is  
11 a feeling that squealing on your buddies is wrong. And  
12 whether that feeling is right or wrong the fact is, I  
13 think, that this contributes to disrespect for the  
14 system, for the law, alienation, whatever you want to  
15 call it.

16 THE CHAIRMAN: Professor Schwartz?

17 PROFESSOR SCHWARTZ: I think the discussion  
18 has been about the utility for the law enforcement purposes  
19 of incriminating the user. Maybe it's inappropriate  
20 to say something about the morality of that but unless  
21 you rule me out, I'm about --

22 THE CHAIRMAN: This is on the agenda.

23 PROFESSOR SCHWARTZ: Well, I'm appalled at  
24 the notion that you incriminate something in order to  
25 procure a witness, incriminate an activity in order to  
26 procure a witness against some other activity and I  
27 was never more appalled than the deliberations of our  
28 National Commission on the Reform of Federal Criminal Law  
29  
30



1 when the narcotics law enforcement people wanted to  
2 make it a felony to use narcotics and even marijuana  
3 because if you are going to squeeze you might as well  
4 squeeze big.

5 Now, I think that one ought to hesitate  
6 very much before going beyond penalizing the commercial  
7 activity of prostitution and saying that every patron  
8 of prostitution is a criminal or going beyond penalizing  
9 illegal gambling, operating illegal gambling establish-  
10 ments and say every gambler is a criminal because that  
11 would help us convict those against whom really we are  
12 directing our law enforcement enterprise. So I leave  
13 it at that. I think that one ought not to incriminate  
14 an activity with the idea of facilitating the police,  
15 the use of these as informants or stool pigeons.

16 THE CHAIRMAN: I wonder if there is  
17 any views on response to an earlier question that  
18 Professor Schwartz put, namely, the relative effective-  
19 ness of enforcement against trafficking in Canada?  
20 What do you gentlemen feel about that?

21 MR. ROSENTHAL: The possession offence?

22 THE CHAIRMAN: We have two offences.  
23 Possession and possession for the purposes of traffick-  
24 ing.

25 MR. ACKROYD: The only statement I can  
26 make ---

27 THE CHAIRMAN: Thinking of cannabis  
28 first of all.

29 MR. ACKROYD: Again you have got all  
30 levels of trafficking here, you have got the young person  
who buys, you know, a small amount and shares it with  
his friend and then you've got a trafficker. And then  
on the other extreme you've got someone bringing it in  
in large quantities and working it at that level where



1 | they are dealing, you know, in bricks and numerous drugs  
2 | and so on. So it's hard to know at what level or how  
3 | effective we are in the area of the trafficker because  
4 | we only know what we arrest. We don't know of what  
5 | we missed or what we don't have. We are only measuring  
6 | statistics of our successes and none of our failures,  
7 | let's say.

8 | I suppose the only unit of measurement would  
9 | be the availability of the drug on the street. If my  
10 | information is correct when I left Toronto last week  
11 | I was talking to some young kids and they said, you  
12 | know, there's so much hash and grass around you can be  
13 | very selective in what you smoke and I suggest you buy  
14 | the light yellow stuff, the Lebanese, it's the best. So  
15 | it's that problem that you can become discriminating  
16 | in which type, then we are not too successful I suppose  
17 | and that's about the only unit of measurement I would  
18 | have and we are making arrests for trafficking but ---

19 | PROFESSOR SCHWARTZ: Does the trafficking  
20 | include any transfer?

21 | MR. ACKROYD: It could legally.

22 | PROFESSOR SCHWARTZ: You don't discriminate  
23 | between the transfer among the type of -- among the  
24 | users of the transfer out of the hands?

25 | THE CHAIRMAN: The law doesn't ---

26 | PROFESSOR RYAN: Under our law, giving  
27 | or even administering is technically trafficking.

28 | PROFESSOR SCHWARTZ: In my own thinking I  
29 | make a distinction between the transfers that occur in  
30 | a university community ---



1 PROFESSOR RYAN: This is only so with  
2 regard to the drugs that come under the Narcotic Control  
3 Act. With drugs under the Food and Drug Act giving is  
4 not in itself trafficking.

5 THE CHAIRMAN: I'd include the definition  
6 but I don't think any importance can be attached to that.

7 MR. STEIN: What is the pattern on  
8 that distinction in Toronto and Halifax in terms of  
9 the people who are being charged with trafficking? Is  
10 it likely that an individual involved in a given situa-  
11 tion technically would be guilty of trafficking would  
12 be charged under this? Do you have any sense of the  
13 pattern of arrests on this criterion in Toronto and  
14 Halifax?

15 MR. PAUL: Not in Halifax that I know of.  
16 I don't know of anybody that has been charged for  
17 trafficking by giving it to another party.

18 MR. STEIN: What about Toronto? Do you  
19 know?

20 MR. ACKROYD: I know of no case and again  
21 I may not be in a position to give you an accurate  
22 answer but I know of no case where someone did give  
23 something to another person and ended up being charged  
24 or convicted of trafficking. But I do know, and I've  
25 heard of cases where -- down to the level I talked  
26 about where one young person goes and buys a quantity  
27 and sells half to another person that he meets and ends  
28 up involved in trafficking. That wasn't a social thing,  
29 just someone he meets in the village, he approaches him  
30 and he buys half of what he just purchased and then he



1 ends up with being charged with trafficking. I know  
2 cases of that type.

3 PROFESSOR HOGARTH: I would like to ask the  
4 two police officers a question through you, concerning  
5 apparent increase in sophistication and criminalization  
6 in the soft drug trafficking, particularly over the last  
7 year. Apparently, at least to me --- what implications  
8 does this have for the future of law enforcement and  
9 indeed the future in terms of exploitation of the user?  
10 Do you see a more sophisticated organizational style  
11 and a much more criminalized relationship between  
12 traffickers and users? What do you see in this field  
13 in terms of conviction for the police?

14 MR. ACKROYD: I think I answered some  
15 of that earlier on. I'd like to clear up a point be-  
16 tween the sergeant and I, we just said something  
17 different and I'm not sure the difference in what we  
18 said didn't relate to his city and ours. And I don't  
19 know, if everybody kind of gathered that, we will  
20 drop it -- the reason I have some feelings regarding  
21 the business of law enforcement whether or not it is  
22 a deterrent is to look, for instance, at two glaring  
23 examples -- and again I'm only talking about what  
24 physically happens but if you take Mosport in relation  
25 to Rockhill, one where there was no law enforcement  
26 per se on the grounds and look what happened and look  
27 at Rockhill where the people sat down and planned what  
28 they were going to do in relation to the control of  
29 drugs at that particular festival and look at the  
30 difference. Now again I'm not arguing right or wrong



1 principles and I'm not saying what the police should  
2 have done in this one or that one, I'm just saying  
3 within the framework of the present legislation and  
4 the law we have, the law could be used and was used  
5 to prohibit drugs at one festival and at another  
6 particular festival drugs were used and drugs were  
7 fairly prevalent. When we talk about the level of  
8 enforcement in our city, the police are in a problem  
9 at all times of what authority would I have as a Deputy  
10 Chief or what authority would my commission have or  
11 what authority would my chief have or what authority  
12 would my council have in our city to document the  
13 discretionary power of the police? I mean an interest-  
14 ing exercise in this was one with Professor Edwards'  
15 classes with Professor Fox where we tried to document  
16 the discretionary power of the police. It was pretty  
17 accurately documented as to the way we are operating  
18 and yet when you read it in black and white, in print,  
19 it became fairly comical, you know, to look at the  
20 documentation of what is happening at a practical level  
21 in the street.

22 DR. LEHMANN: Could you give an example?

23 MR. ACKROYD: Yes, I could. I think  
24 when we get down to saying, you know, the fact, I will  
25 instruct policemen behind closed doors at a rock  
26 festival, you know, that we are not going to arrest  
27 for simple possession, you are not going to go out  
28 in a crowd of 10,000 sitting there using drugs and  
29 start picking kids out and bring them back and make  
30 arrests.



1 PROFESSOR KAPLAN: That doesn't sound  
2 comical to me at all, that sounds brutal.

3 MR. ACKROYD: All right, but I'm going  
4 on with the whole gamut. You know, the fact writing  
5 in some of the things you will do in relation to paid  
6 informants, writing in and saying if you get a person  
7 for drugs if he will give you someone with more drugs  
8 you will release him, that you will even pay your  
9 informants in drugs if necessary, to make arrests. In  
10 other words, if you look at everything police officers had  
11 said they had maybe done in trying to effect arrest and  
12 put it all on paper then the --- I don't know whether  
13 "comical" is a good word but it scares me if you see that  
14 kind of document.

15 PROFESSOR QUINNEY: Let me ask you, do you  
16 think local law enforcement has really anything to do with  
17 trafficking? You're dealing with peanuts, nickle bag  
18 exchanges. Is it more of a problem of importation and  
19 organized crime than anything that can be done at a  
20 local level?

21 MR. ACKROYD: That is the biggest end  
22 of the scale, of course, but then we have some success,  
23 we have major seizures at airports, we have some major  
24 seizures in the amphetamines. We had some major --  
25 fairly large seizures at a place like Rochdale. We can  
26 hit some of the large ones and some of the small ones.  
27 The problem in this area, again, and that's why I wanted  
28 to get back into some talk about how do you document  
29 the discretionary power of the police, is when you have  
30 4,000 policemen and they are out on the street, each  
one is an independent agent of the Crown and if you



1 get a young police officer and he stops someone and  
2 he finds marijuana in the car and decides to arrest,  
3 what sergeant or inspector or ranking officer can say  
4 "No, don't effect an arrest." And what authority has  
5 he got to do that? So it's a very difficult thing.

6 PROFESSOR QUINNEY: I am wondering, you and  
7 Mr. Paul, about the drug laws create business for you.  
8 I mean, you have another law to enforce.

9 MR. ACKROYD: Right.

10 PROFESSOR QUINNEY: What would happen with  
11 law enforcement if you didn't have this function? I'm  
12 assuming the police have something to do -- law enforce-  
13 ment has something to do with keeping peace in the  
14 community, keeping people from killing each other,  
15 keeping peace in the community. Do the drug laws take  
16 away from some of these things?

17 MR. PAUL: What you do -- say our force  
18 consists of 231, 235 men or something like this. You have  
19 a squad that looks after more or less the drug problem.  
20 Along with that you concentrate on your other -- your  
21 criminal law, Provincial Statutes. You see, not every-  
22 body is concentrating on drugs per se.

23 PROFESSOR QUINNEY: So you have both, the  
24 bread and butter --

25 MR. PAUL: We won't go out of business.

26 PROFESSOR QUINNEY: You won't go out of  
27 business.

28 MR. ROSENTHAL: Specialized units will go  
29 out of business because I think from a police point of  
30 view particularly talking about a general police



11 PROFESSOR QUINNEY: I wonder if the  
12 enforcement of these laws is actually more disruptive  
13 in the community than a peace keeping thing?

28 MR. ROSENTHAL: This is not to get them  
29 out of business, it's just a criminal approach.

30 PROFESSOR KAPLAN: They find a completely



1 non-complaining set of cictims that has been  
2 brought into order and, of course, they have brought  
3 into existence the people to prey upon then.

4 PROFESSOR SCHWARTZ: John, I think it's  
5 necessary to say that California and -- some of these  
6 enclaves that have been described are involved in a  
7 marijuana riot, you might say, where the ordinary constraints  
8 don't apply. You can't speak of the entire United States  
9 in terms of the Stanford undergraduate population.

10 PROFESSOR KAPLAN: No, but interestingly  
11 enough -- I would simply agree to that -- but I'll tell  
12 you this much: Three years ago California was like  
13 most of the United -- at least the Eastern Seaboard  
14 and the Midwest is today. In other words, the progress-  
15 ion is very clear in that direction. You already have  
16 an enclave of Harvard, for instance. The Harvard  
17 Square has been described in the New York Times as being  
18 a place where you can walk down the street smoking a  
19 marijuana cigarette and nobody bothers you. And I  
20 can only say that this is obviously going to happen  
21 where it hasn't happened already.

22 MR. PAUL: You see, I would have to  
23 agree with Professor Kaplan in this regard, talking about  
24 black gangs attacking the white traffickers. This has  
25 come to light in the city of Halifax within the last  
26 couple of months. It may be just an isolated incident,  
27 I don't know, but I was approached by two black members  
28 of our community and asking me to give them a list of  
29 the traffickers and they would eliminate them for us.  
30 Because what happened was a black man was supposed to



1 have gotten acid and it must have been bad acid, he  
2 went hom and he attacked his wife with a knife and  
3 the police were called and apprehended him and of course  
4 he was charged. He is now being charged with attempted  
5 murder and this was their way in going to retaliate at  
6 the trafficker. You see, all I had to do was supply  
7 them with this and we probably wouldn't have had anymore  
8 problems with the drug, but many other problems. But  
9 maybe this is the answer.

10 PROFESSOR KAPLAN: You don't know whether  
11 they are just going to do it for themselves.

12 PROFESSOR RYAN: Speaking about the  
13 contrast between California and the rest of the United  
14 States, there has been a good deal in the press recently  
15 about a growth in all forms of drug use including  
16 heroin in New York City. I wonder whether anyone has  
17 data or facts about this and can inform us about what  
18 is happening there and why, apparently, enforcement  
19 has broken down if it has broken down there?

20 PROFESSOR KAPLAN: I have data on it.  
21 Whether it's reliable or not -- I frankly am very dis-  
22 trustful of all data in the heroin area. I mean marijuana  
23 users tend to be willing to talk. Heroin users tend  
24 not to be willing to talk, at least to the kinds of  
25 people I know are sent to talk to them. In any event,  
26 most people on the scene place the epidemic of heroin  
27 use, the new epidemic -- there was an increase certainly  
28 -- but around the time of operation intercept what  
29 happened is the marijuana supply suddenly dried up in  
30 New York, at the same time, just by coincidence, there



1 happened to be a sizeable amount of heroin and heroin  
2 was cut much more than it usually is and sold in the  
3 high schools. And what happened very simply was a  
4 very sizeable increase in heroin use, not documented  
5 statistically because we can't prove it. It still  
6 looks to me from examining the death from overdose  
7 figures, at least 2/3 of the death from overdose are  
8 still black or Puerto Rican. But nonetheless, a sizeable  
9 increase in heroin use. There have been increases  
10 all over. My guess is that this is leveling off now  
11 for two reasons: One is a lot of people have seen  
12 heroin use and they don't like what they see. Heroin  
13 is not a good advertisement for the user, at least in  
14 the middle class areas. And two, is you are beginning  
15 to find a sizeable number of people moving from heroin  
16 to methadone in the United States.

17                   PROFESSOR RYAN: The other question I  
18 have relates to a remark made by Mr. Ackroyd dealing  
19 with various levels of trafficking. Now the impression  
20 I have from people who give me information who are  
21 not very numerous, is that in this country at least  
22 until recently the traffic in marijuana was largely  
23 an unorganized operation by a large number of small  
24 entrepreneur, but that heroin traffic was highly  
25 organized. I would like to know whether first of all  
26 that is the situation today and whether there isn't  
27 a change and also what is the situation in the United  
28 States with regard to these drugs?

29                   THE CHAIRMAN: I'm wondering -- I think  
30



1 we should probably adjourn for lunch and resume at that  
2 point, if we can at 2:00. It is now about 12:25, and  
3 we are serving lunch in room 3402.

4 ---Upon recessing at 12:25 p.m.

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1 ---Upon resuming at 2:00 p.m.

2 THE CHAIRMAN: All right, we will resume  
3 now. I would just like to say a few words about the  
4 way we see the rest of the day. I propose that we go  
5 until 5:00 and then we take a break at 3:30. At 5:00  
6 the Commissioners will have a short meeting together  
7 to just take a stock of where we are at. We have a  
8 regular meeting in addition to a special meeting of  
9 this kind and it will probably take an hour or so, an  
10 hour and a half, but everyone is welcome to go to our  
11 suite, the suite that we just left, at the conclusion  
12 of the meeting and we've reserved a table for dinner  
13 on the top floor tonight for those of our guests  
14 who are able to remain with us and we hope as many as  
15 possible can remain and others who have to leave can  
16 leave when it is convenient, but we hope that they  
17 will give us the pleasure of their company as long as  
18 possible in our suite.

19 I thought this afternoon -- we had this  
20 morning what I characterized as a pell-mell, not major-  
21 atively but I think it was Nelson's naval tactic and  
22 it does give you a sense of what you are up against  
23 and what various points of view are and it breaks up the  
24 ground. And I thought this afternoon in order to  
25 maximize the benefit to us, the Commission, of the  
26 presence of so much valuable experience and judgment  
27 that we might try to move and proceed a little more  
28 systematically and give each of our guests a slightly  
29 more extended opportunity to express his general per-  
30 spective and advice with reference to some of the



1 issues that we have to grapple with having regard to  
2 the distinction that should be made between the drugs  
3 and such matters as the possessional offence, civil  
4 commitment. In other words, what would you do? What  
5 would you advise? What should we do? What kind of a  
6 policy should be developed here? So I thought I would  
7 just call on our guests and each one can respond to  
8 the extent that they wish to other previous speakers  
9 and then probably before the end of the afternoon we  
10 will have further opportunity for general discussion.

11 If that is satisfactory I should ask in  
12 the sense of the meeting if that is a satisfactory  
13 suggestion for all present?

14 I read this in an affirmative sense so  
15 I will call on Professor Schwartz. Would you like to  
16 start off and express your views?

17 PROFESSOR SCHWARTZ: Well, I have no  
18 sort of comprehensive position on this. I was making  
19 notes during part of the programme I heard this morning  
20 and this is as good an opportunity to respond to some  
21 of those things I heard as any. The question I heard  
22 debated was the utility of the criminal law in control  
23 of non-medical use and it's obviously not going to be  
24 possible to differentiate the utility for each of the  
25 drugs involved and I recognize and acknowledge at once  
26 the answer would be difference for each of these drugs.  
27 And I am going to talk, therefore, mostly about mari-  
28 juana. And I want to address myself to three topics:  
29 One is the deterrent efficacy of the criminal law in  
30 this connection. Another is the educational virtues of



1 the criminal law and laternative ways of education on  
2 this subject. And third is conservation of law enforce-  
3 ment resources.

4 Now, I heard a good deal that suggested  
5 the criminal law was not a deterrent to the use and  
6 distribution of marijuana. I am skeptical of that. I  
7 think that the criminal law is always a marginal deter-  
8 ent. That is to say, there are some people who can be  
9 frightened out of various forms of misbehaviour. There  
10 are some other people who are attracted by the fact  
11 that there is a threat associated with the misbehaviour.  
12 And then there is a considerable group, I think of as  
13 on the edge, influenceable, and I suspect in this group  
14 a sanction of some sort against the use of marijuana is  
15 a marginal factor. I am not saying anything more than  
16 that -- than this, that you cannot dismiss deterrents  
17 even in the field of marijuana.

18 Of course much more important aspect of  
19 it is the cost. You can maintain a deterrent, but the  
20 real focus of the inquiry is, what does it cost to  
21 maintain it? I mean not just fiscally, but socially.  
22 You cannot, which many people have observed, indict  
23 a whole community, and I think as in the case of  
24 prohibition, so in the case of the marijuana culture  
25 at least, you are faced with that undertaking and it  
26 is clear to me as it is, I think, from the report, that  
27 the cose of maintaining any marginal deterrent against  
28 the use of marijuana, even assuming that its use should  
29 be discouraged, is impossible to bear.

30 I do think that a much more restricted



1 penal sanction directed against trafficking, and I would  
2 define trafficking very narrowly, is a possibility. And  
3 I think it has some merits. We don't quite know yet  
4 whether marijuana is -- ought to be discouraged, but on  
5 the other hand in matters like this I think the status  
6 quo cannot be disturbed until the case is fairly clear;  
7 and therefore I think that some kind of community re-  
8 straint is indicated here. You have got it; you ought  
9 to temper it; you ought to get rid of as much as  
10 possible of the disadvantages of the criminal sanction  
11 system. And yet I would retain, as I say, some effort  
12 to stamp out this as a way of making a living.

13               And when I say I would try to deter  
14 trafficking, I'm not talking about these transfers on  
15 a small scale that are typical of the user population;  
16 I mean large scale, I mean substantial transfers,  
17 transfers from which you could assume or infer that  
18 this was the livelihood of the person or that this tran-  
19 saction represented a wholesale transfer.

20               The furthest I would go in relation to  
21 smaller scale transfers and the interest of law enforce-  
22 ment in developing leads against wholesalers would be  
23 to play with the burden of proof, and I am very shaky  
24 about this, but I would perhaps associate with a  
25 transfer of more than a minimal amount, some kind of  
26 a presumption, that this was a commercial transfer and  
27 I would allow the transferor an opportunity to prove  
28 himself out of that situation. This would lay the basis  
29 for arrests, but of a very much smaller number of people.  
30 I mean the arrestable population would be very much



1 smaller than under prevailing laws.

2 That is as much as I want to say about  
3 the deterrent programme.

4 Now as to education: I had expressed to  
5 Mr. Moore at the luncheon interval my fears about  
6 mounting a big educational programme on marijuana. And  
7 when I think of that I think of a parallel question  
8 that was submitted to me a year or so ago in relation  
9 to homosexuality in the United States. A group of  
10 liberal judges were considering a joint condemnation  
11 of laws that prevail in many states, making consensual  
12 sodomy a felony and they coupled their recommendation  
13 with a proposal that there be mounted an educational  
14 programme, a treatment programme and I wrote, really rather  
15 hotly, to the judges and I said "For God's sake, the  
16 criminal programme would be more humane than the educa-  
17 tional and treatment programme that you contemplate and  
18 the real thing is to get off their backs; let them,  
19 the people ---" (laughter)

20 And that is what I would certainly wish  
21 to avoid if you do mount an educational programme. It,  
22 of course, can't be a preachy programme and if you  
23 are thinking of a programme on the dangers, the risks,  
24 you have to think about who is going to do this  
25 education and it will probably be 95% by people who  
26 have never had any real contact with the drugs in  
27 question and it will be a tisk, tisk sort of education.  
28 I would really be rather quite dubious about it and  
29 I wouldn't know how you could do it truthfully.

30 And on the other hand, you know, there



1 is to be something said about the criminal law as an  
2 educator. I don't like to see it used too often in  
3 this way but if I may digress for a moment, I am very  
4 much reminded of a case which we always use in the  
5 United States as exemplary of how you deal with sub-  
6 cultures and it is a Canadian case, so it may be familiar  
7 to many of you; it is Regina against (Machaquanomi)  
8 and I always congratulated myself on learning how to pro-  
9 nounce it. But that was the case of the Indians up  
10 north stationed outside their own encampment to guard  
11 against wendigos who were spirits in human form capable  
12 of devouring them and inclined to devour people and  
13 these people, these Indians had stationed pairs of  
14 guards at the four corners of the encampment and sure  
15 enough there was a wendigo running through the woods  
16 and one of them shot him to death and it turned out to  
17 be his father-in-law, I believe. But that was not  
18 inconsistent with it being a wendigo. Wendigos were  
19 very clever that way.

20 Then he was arrested and prosecuted for  
21 murder. And, you know, it should have been a good self-  
22 defence case or superior orders case or something, but  
23 they put the case to the jury and said "Is this man  
24 insant?" "No, he's not insane." "Did he make a mistake  
25 that was reasonable?" "Certainly he did not." They  
26 went through all of the Anglo-American law and con-  
27 victed the man of manslaughter and sent him away.

28 The alternative was, of course, to send  
29 missionaries up there but that was a long, slow process  
30 and expensive. And here you could very quickly, you



1 know, and very dramatically explain -- not explain, but  
2 celebrate to the Indians the nonexistence of the wendigos.  
3 Now I do think to maintain some kind of a criminal  
4 sanction in this area is a form of education and I  
5 would be prepared to tolerate it when it took the form  
6 of penal repression, of making your living by distribu-  
7 tion of this drug. I tend to justify such controls  
8 which are paradoxical, because they in effect say that  
9 you can buy it if you can find a source of supply, but  
10 it's a crime to be a source of supply. I tend to try  
11 to demoralize such a discrimination by saying that our  
12 societies have always regulated economic activities  
13 and I am viewing this as simply one of the forbidden  
14 ways of earning one's living. We are trying to redirect  
15 energies into more productive channels. If that helps  
16 anybody you are entirely welcome to it.

17 Now I go on then to the last heading  
18 which I felt moved to make any other observation and  
19 that's conservation of law enforcement resources in  
20 this area. This is essentially a strong argument for  
21 decriminalizing marijuana fields to the maximum extent  
22 consistent with maintaining this concaded control of  
23 economic activity. Conservation of law enforcement  
24 resources if first of all a question of their allocation.  
25 We started to talk about that this morning. I don't  
26 know how many people you would free for the real problems  
27 of security in the community if you could transfer your  
28 marijuana and other drug squads to patrolling for robbery.  
29 But there would be some increase, it seems to me, and  
30 it may very well be that the dispersion of law enforce-



1 ment resources among drug control on the one hand and  
2 violence on the other is such as to have a net increase  
3 in violence. It may be that if we could switch over  
4 and we would have more effective control of those real  
5 insecurities that bother the community. So it is re-  
6 allocation of the resources.

7 Another aspect of conservation of law  
8 enforcement resources that strikes me is you preserve  
9 respect for these forces. That is, you keep them out  
10 of the kind of nasty enforcement practices that are  
11 unavoidable when you are trying to incriminate drug  
12 users, particularly. So there is a gain there.

13 I think perhaps I will stop with that.  
14 Maybe I will be moved to additional comments when my  
15 colleagues speak.

16 THE CHAIRMAN: Thank you very much.

17 Professor Quinney?

18 PROFESSOR QUINNEY: I had a number of  
19 points I wanted to make and sometimes repeating what I  
20 said this morning, and maybe they all fit together.

21 I have a difficulty dealing with the  
22 criminal law as a way of bettering society. Intellect-  
23 uals talk about the hard-hat approach to law and order,  
24 but it is more a reading law and I don't think we need  
25 hard-hats because we are also fostering a law and order  
26 approach. Our problems are to be solved by controlling  
27 man. It is a repressive approach. So as I say, I have  
28 some difficulty in trying to make proposals that use  
29 the law as an attempt to bring about solution to  
30 problems.



1                   Also on the matter of being forced to  
2 suggest something that is practical: What is practical  
3 is a matter of definition. It is a matter of what  
4 reality you are dealing in, I think. And what may be  
5 impractical now talking here may actually be -- what  
6 may be impractical may be the most practical thing  
7 in terms of eliminating a problem and finding a  
8 solution. So what I suggest on the one hand may seem  
9 to be impractical; I think on the other hand given a  
10 different conception of reality it is practical.

11                   We were asked this morning to consider  
12 the harm and maybe in changing the criminal law we  
13 should consider what is harm to the user on the one  
14 hand and, on the other hand, what harm to society? And  
15 I think it is difficult to repeal changes in some way  
16 criminal law on the basis of this mandate because who  
17 is to determine what is a harm to an individual? You  
18 know, maybe here we are harming ourselves and we should  
19 be outlawed by being here. Maybe eating food, and that  
20 appears more so all the time, is harmful to us. So who  
21 is to step in and decide what is harmful for us? Again  
22 I think it is a matter of definition and I certainly  
23 have great doubt about people who would define what is  
24 individually harmful for us. Because I think they  
25 are trying to protect certain interests in a particular  
26 type of society that benefits them rather than others.

27                   As far as what is harm to society, again,  
28 who is to determine what is a social harm? I don't  
29 think this is, you know, given. This is a matter,  
30 again, of someone's conception of what is harm to a



1 society. It may be harmful to their image of what is  
2 a good society but it may not be harmful to some others  
3 image of what is a good society.

4 As far as your own problem of what to  
5 do with the law, I talked about liberalizing the law,  
6 in fact eliminating the law on marijuana, and certainly  
7 on heroin. I think they are of the same process on a  
8 general level. I can't get excited about making a  
9 distinction between the two. I don't say this because  
10 I think drugs are, you know, a cool thing to do.  
11 I personally don't like them and, you know, would rather  
12 have a better life on the basis of something other than  
13 drugs. I think maybe as far as perpetuating the type  
14 of society we have that also destroys in its own ways  
15 would be to even make stricter laws, you know, go  
16 ahead and make more laws on marijuana and on heroin  
17 because this is a good way, I think, to perpetuate the  
18 drug addiction problem and I think one way to keep an  
19 underclass down is to keep them drugged out of their  
20 heads. If they were to become political beings,  
21 interested in changing the society where it would be  
22 not necessary to use drugs, this would be dangerous to  
23 the power structure.

24 DR. LEHMANN: I'm sorry, I didn't follow  
25 that argument. Could you do it again?

26 PROFESSOR QUINNEY: That I think by  
27 legalizing -- or that by making drugs illegal you are  
28 actually proposing a solution that perpetuates the problem  
29 and if we want to perpetuate the problem, and I think many  
30 people would, because it actually keeps a large portion



1 of the population that could become politically active,  
2 trying to change their own lives, creating a different  
3 type of society so that they wouldn't have to use drugs,  
4 this would be dangerous to current politics, to current  
5 social and economic arrangement. So maybe what is  
6 practical for those who hold power and what that kind  
7 of society is to make drugs illegal and to maintain a  
8 large segment of the population as drug addicts because  
9 then they wouldn't be in a position to change their  
10 own lives.

11 DR. LEHMANN: The argument is that re-  
12 strictive legislation has the same effect as drug  
13 trafficking would have, pushing?

14 PROFESSOR QUINNEY: Yes.

15 DR. LEHMANN: By maintaining the drug  
16 community.

17 PROFESSOR QUINNEY: Yes, and I think our  
18 programmes perpetuate drug addiction. We're all in the  
19 drug addiction business because of the economic thing,  
20 programmes we propose, hospitalization programmes, law  
21 enforcement. And it becomes such a big business that  
22 I think it is advantageous to all of us to keep drug  
23 addiction around. I don't think this is just being  
24 facetious. I think if we were to get rid of drug  
25 addiction we would get rid of a large source -- a large  
26 economic source. We would also have a large unemployment  
27 not only among ourselves but certainly among those we can  
28 keep drugged. And if we are talking about changing the  
29 drug laws we are really dealing with some big issues  
30 which are practical issues, you know? It's like what



1 kind of a world are we going to live in and that's  
2 a pretty practical thing.

3 THE CHAIRMAN: I'm not sure I follow your  
4 line of reasoning, Mr. Quinney. You say that the present  
5 approach to the criminal law, the present repressive  
6 approach probably maintains but it doesn't increase  
7 drug use and that this may be in the interest of those  
8 who favour the status quo since it reduces the political  
9 activism if you want, of people who might otherwise be  
10 critical of the system.

11 But what is the assumption or what  
12 assumption are you making, what alternative assumption  
13 are you making concerning elimination or reduction of  
14 drug use, are you implying that there is some way drug  
15 use could be reduced, if not eliminated, by a different  
16 legislative policy?

17 PROFESSOR QUINNEY: Nothing we could do,  
18 no solution we could propose I don't think.

19 THE CHAIRMAN: Are you suggesting that a  
20 liberalization would lead to less drug use?

21 PROFESSOR QUINNEY: Yes, I think so.

22 THE CHAIRMAN: How is that? How do you  
23 see that?

24 PROFESSOR QUINNEY: Either less or it  
25 wouldn't make any difference. But I think with further  
26 legislation you create, for example, an organized drug  
27 supply where it is advantageous for organized crime or  
28 whoever is supplying the drugs to continually hook  
29 people, particularly on heroin, to maintain their busi-  
30 ness. You also increase the vested interest of all of



1 us in law enforcement, teaching criminal law, sociology,  
2 working with drug row, drug rehabilitation programmes,  
3 Cynenon, hospitals and others to continually rehabili-  
4 tating people that will come back at a 90% rate, 50%  
5 rate or what have you.

6 I only think of a change in society that  
7 would have very little to do with the law. We would  
8 have the kind of life where people wouldn't need drugs  
9 or if they want drugs that's all right. But my assump-  
10 tion is if one can live a life without drugs, where drugs  
11 is not the most rational way of finding meaning in life,  
12 that's the best kind of society and I am afraid our  
13 criminal law in our kind of society which is a part of  
14 this criminal law -- I don't think the two can be seen  
15 separately, to create a kind of life where drug use is  
16 quite a rational thing and then to control it, you know,  
17 is not really providing a solution. You are just  
18 enhancing the problem.

19 So that's another point I want to make.  
20 In talking about what is practical we are suggesting  
21 solutions that are part of the problem to begin with,  
22 that drug addiction cannot be solved or effectively  
23 controlled as long as the solutions support the values  
24 in structural changes that produce drug addiction in  
25 the first place and only if we are willing to face a  
26 kind of society, argue for structural changes which  
27 has very little to do with drugs, you know, it takes it  
28 beyond to many other things and only then will we not  
29 have drug addiction. But I'm not sure we are willing  
30 to pay that cost.



1 THE CHAIRMAN: What kind of liberaliza-  
2 tion would you contemplate, what kind of changes in the  
3 law specifically?

4 PROFESSOR QUINNEY: Well, as I say, I don't  
5 think the law has much to do with it. Just elimination.

6 THE CHAIRMAN: Just in different hands.

7 PROFESSOR QUINNEY: Yes. What I see as the  
8 kind of movement is towards more decentralization. Let  
9 communities take care of their own problems rather  
10 than a federal law -- this is the point: Rather than  
11 a federal law, a federal commission which decides to  
12 impose monolithically its solutions, let each province,  
13 or even further, let each community decide what its  
14 problems are so that people have some control over their  
15 lives that they can define what is the problem, let them  
16 define their own solutions. I'm not sure what role the  
17 state really can make for the world or people better.  
18 It's only an oppressive situation.

19 DR. LEHMANN: Can the community do it?

20 PROFESSOR QUINNEY: I think the community  
21 has to do it.

22 DR. LEHMANN: Why would it be less  
23 oppressive? Why would city hall be less oppressive  
24 than the federal government?

25 PROFESSOR QUINNEY: I know the problem,  
26 local vigilantes and so forth. You are at least parti-  
27 cipating in these decisions or you may have a greater  
28 opportunity to participate in what you define as a problem  
29 rather than a few people around the table defining what  
30 is good for the people, for millions of people across



1 the country.

2 MR. STEIN: In terms of the world as it  
3 is or the world as it might be, what does this mean in  
4 1971, in your estimation? In terms of the world as it  
5 is, cities as they are, people as they are, what is  
6 the community involvement that you are saying?

7 PROFESSOR QUINNEY: It means, one, I  
8 think we are out of a job here because I think the problems  
9 are beyond this kind of discussion and I think we can  
10 only, I think, exasperate or increase the problems. I  
11 think we can further the solution by doing nothing as  
12 intellectuals around here. I think it is sort of a  
13 movement towards communities defining what they regard  
14 as the problem so that man himself can be different.  
15 We base our solutions of w-at we think is the nature  
16 of man and the only man we know is the one who is a  
17 product of this kind of society that makes drug addiction  
18 appealing and for us it makes control an appealing  
19 solution.

20 MR. STEIN: In other words, what you  
21 are suggesting is, tomorrow, if you could, eliminate  
22 all forms of any kind of state intervention in the area  
23 of drugs, law, education, help of any sort?

24 PROFESSOR QUINNEY: Yes.

25 MR. STEIN: What about street clinics?  
26 Should anyone be concerned with setting those up?

27 PROFESSOR QUINNEY: The state should be  
28 maybe a revenue collecting agency providing for certain  
29 instrumental things like maybe the traffic and garbage  
30 and as far as ones moral life, let the community deter-



1 mine what it wants and to draw on money, I don't mean to  
2 get into a Nixon revenue sharing type of thing because  
3 that is a quite different thing. I have worked with the  
4 New York State Narcotic -- New York State Narcotic  
5 Addiction Control Commission for a year on a project on  
6 the lower east side and it was the purpose for determining  
7 what the public conception of drug addiction was or what the  
8 problem was. And of course we found many different  
9 sub-communities on the lower east side. There was no  
10 one reality of what drug use was or what the problem  
11 was. And the state's programme was ineffective because  
12 it was imposing its order on a diversity of communities.  
13 It had its own education programme which was the form of  
14 indoctrination according to what it believes true which  
15 meant nothing to the communities so the methods or  
16 programmes were ineffective in the communities. Accord-  
17 ing to my values I was pleased in effect -- it would be  
18 a danger I think to be effective.

19 Each community had an idea what its  
20 problem was and it had its own institutions and if it  
21 had its own resources providing the money from other  
22 things like the creation of this commission I think it  
23 can better handle it. I think we are hung up on trying  
24 to find a monolithic policy to impose on the rest of  
25 the world.

26 MR. STEIN: When you're talking about  
27 communities, even though the realities, as I understand  
28 it most of us live in urban centers in North America.  
29 I'm not talking about communes. What do you mean by  
30 community? What are they, are they neighbourhoods?



1 PROFESSOR QUINNEY: Obviously I'm not  
2 going to create the communities, I'm going to let people  
3 define their own boundaries to what is a community, and  
4 definition of what their communities are and have  
5 created their institution, though various agencies have  
6 come in to try and impose their order on these communi-  
7 ties. From the lower east side we had about 100 different  
8 agencies, city and state, federal agencies doing very  
9 little. Their main thing, they were into collecting  
10 government money, namely aid, O.E.A. money and this  
11 is pretty well what they were about rather than helping  
12 people in the community. The community had very little  
13 control what was happening to them. But as a result  
14 the programmes were ineffective and they weren't dangerous  
15 anyway but they were using money that the people in the  
16 community could be using to handle what they regarded  
17 their own problems. And I think only then ---

18 PROFESSOR BERTRAND: What do you do when  
19 you take away from these communities or when some of  
20 the communities turn to the central government for the  
21 solution of the problem?

22 PROFESSOR QUINNEY: All right, that's all  
23 right, then that's using the central government if  
24 there is going to be a central government. I think we  
25 are hung up and there has to be a central national  
26 government, but I think the trend is another way away  
27 from the nations state.

28 PROFESSOR BERTRAND: You mean in the  
29 United States?

30 PROFESSOR QUINNEY: In the world. Once we



1 go through nationalism in various countries.

2 MR. EDWARDS: How do you solve the  
3 question of inflicting the demands on the different  
4 sources you wish to communities to fulfill their cer-  
5 tain objectives?

6 PROFESSOR QUINNEY: What about the ---

7 MR. EDWARDS: How does one resolve the  
8 conflice of interest newly arised by the resources  
9 supplied by community B in access of those which are  
10 available in regard to in need of communities B, C, D,  
11 E and F and so on?

12 PROFESSOR QUINNEY: I don't know the economics  
13 but if you are talking about, you know, economic re-  
14 sources, I'm assuming there is enough to go around.  
15 Some communities may need very little.

16 MR. EDWARDS: Let's assume that as in the  
17 reality of the situation there are only enough resources  
18 to fulfill everyones' needs and there becomes then the  
19 matter of priorities. Who determines and upon what  
20 criterion?

21 PROFESSOR QUINNEY: The people determine  
22 what they need and then there is a central government --  
23 I assume it is still elected representatives at that  
24 level who would then allocate according to the needs.  
25 But I don't want to go too far into this. I mean, you  
26 know, I'm not going to work out my plan to impose upon  
27 the world either.

28 MR. EDWARDS: You can't escape having  
29 sought to advocate a particular philosophy, you have seen  
30 some of the implications that arise in substituting



1 the different model.

2 PROFESSOR QUINNEY: Yes. Well, I just see  
3 that we've done such dangerous things and so many  
4 destructive things are happening given policies made  
5 out by normal men using rational schemes that I am not  
6 afraid to suggest, you know, other possibilities without  
7 having the outlines determined. Because whenever you  
8 start something you don't know what it's going to be like.

9 THE CHAIRMAN: But apart from this  
10 approach of the centralization of the position process  
11 here, I understood you would be in favour of the with-  
12 drawal of the criminal law in this whole area.

13 PROFESSOR QUINNEY: On a federal level  
14 anyway.

15 THE CHAIRMAN: That's the only level we  
16 can have criminal law in this country in any event.  
17 Do you have any ideas about distribution, or do you  
18 just allow it to be dealt with?

19 PROFESSOR QUINNEY: Distribution of what?

20 THE CHAIRMAN: Of drugs, availability,  
21 no regulation upon the quality or upon availability?  
22 Just allow it to be determined by the market, those  
23 who come in can sell these drugs without any regulations?  
24 I'm speaking now of non-medical use of drugs.

25 PROFESSOR QUINNEY: I don't go for free  
26 enterprise that much but then I guess we get into the  
27 matter of policy and rather than a criminalizing policy  
28 it is a policy of supply which people are not being  
29 punished.

30 The problem of using Britain as an example



1 is that's also a policing system, when you argue,  
2 "well, that system is not working." It is still  
3 people are being kind of sanctioned for going and getting  
4 their supply and they can't get enough and they have to  
5 buy it someplace else. That's still not an open market.

6 THE CHAIRMAN: Do you contemplate a  
7 government monopoly of supply of these drugs, heroin,  
8 methamphetamines, cannabis?

9 PROFESSOR QUINNEY: I think to begin with  
10 this is a step towards getting us out of the problem  
11 of drug addiction, yes.

12 PROFESSOR BERTRAND: How does it follow  
13 from your conviction that there shouldn't be any cen-  
14 tralized power?

15 PROFESSOR QUINNEY: Other than to provide  
16 some basic services that the people say they need. If  
17 they say they need drugs, then let the state provide it  
18 but don't let private entrepreneurs get in to supply the  
19 drugs.

20 MR. STEIN: Supposing communities want  
21 to get into it, you know, neighbourhoods. One neigh-  
22 bourhood grows a better brand of grass than another,  
23 you get into free enterprise; what's wrong with that?

24 PROFESSOR WEILER: If one community  
25 wants to use force and coercion to prevent individuals  
26 in that community from using drugs, do you have any  
27 principle for the neighbourhood or the community?

28 PROFESSOR QUINNEY: Well, that's the right  
29 of that community. It has that right.

30 PROFESSOR WEILER: Why can't a person say



1 I'm a community to myself, just leave me alone. And we  
2 had discussion this morning about the realistic  
3 possibility of neighbourhood vigilante groups, for  
4 instance, making the sale of heroin ---

5 PROFESSOR QUINNEY: If you want to be a  
6 community, be one, but I don't think you would be.

7 PROFESSOR WEILER: Why not?

8 PROFESSOR QUINNEY: Because I think maybe  
9 you want to be a part of other people. And if you don't,  
10 that's all right.

11 PROFESSOR WEILER: Surely on the lower east  
12 side, who are these people? Bec ause they live in a  
13 community that has a substantial -- almost the total  
14 number of the community -- people shouldn't use --  
15 have they the right to say to that person you can't use  
16 it?

17 PROFESSOR QUINNEY: In these communities,  
18 because the state made heroin use illegal, well the  
19 problem to the community was or is that the heroin  
20 addicts are supporting their habit, \$300 a day habit,  
21 by burglarizing their friends.

22 PROFESSOR KAPLAN? Don'e they burlarize  
23 other communities? In other words, if my community wants to  
24 sell heroin for a high price to people who steal in  
25 other communities, why shouldn't my community do it?  
26 It's known in economics as (enable benefact.) Is there  
27 any objection to that?

28 PROFESSOR QUINNEY: Well, then what you are  
29 saying is that the state would ---

30 PROFESSOR KAPLAN: Then I'm saying that



1 (inaudible) is good.

2 PROFESSOR WEILER: An anarchism is not  
3 necessarily an answer to the problem. The problems are  
4 just reproduced at the community level. You still have  
5 exactly the same implications.

6 PROFESSOR QUINNEY: In any event what you  
7 are getting into is the problem of a distribution of  
8 the drug rather than criminalizing people that use it  
9 and that's the point I want to make.

10 PROFESSOR WEILER: Suppose a community  
11 wants to criminalize the use of it. I think there is  
12 more likelihood in the community itself, you're going to  
13 have less tolerance and less sensitivity of individual  
14 differences than in a federal level, for instance.

15 PROFESSOR QUINNEY: Maybe so.

16 PROFESSOR WEILER: The tyranny of the  
17 small group, I think, is much more likely to be  
18 deteriorating.

19 PROFESSOR QUINNEY: But in any event  
20 what I'm saying -- well, I am certain that rather than  
21 penalizing drug use, just lay off of that or leave it  
22 to the provinces and it's not a criminal law then

23 PROFESSOR WEILER: Make anyone, make the  
24 communities lay off penalizing drug use and in that  
25 sense the law can be liberated.

26 PROFESSOR QUINNEY: It's not the problem  
27 of drug use, it's the problem of what happens when you  
28 have this kind of legal system that people have to do  
29 other kinds of crimes in order to support the habit  
30 and rather than outlawing, you know, their morality.



1 Well, and after that and if you want to get into control  
2 of drug users supplying it, that is a different issue,  
3 but I was talking mainly about criminalizing drug use  
4 and I don't think it was a centralized matter.

5 I certainly question a proposal for  
6 further research. And I notice it is in the Interim  
7 Report. That is a strong proposal. It usually is in  
8 such reports.

9 Again I am afraid that all that does is  
10 again support the drug addiction business, that policy is  
11 a matter of values and that research is going to do  
12 little to make a policy decision. (Eric Good) for the  
13 U.S. hearing and also in Albany, made a similar argument,  
14 that you can get all of the scientific results but  
15 that's not going to, when it comes to the end, determine  
16 what kind of policy you are going to have because what  
17 is harmful is a matter of definition and so drugs are  
18 in the end proven to be harmful to one extent or  
19 another. And so are many other things that we don't  
20 make illegal so it's a matter of your values or what  
21 you like or what you don't like and I am trying to  
22 suggest that drug addiction is not that harmful  
23 socially or to the individual and it is more of a  
24 private matter and I think it's dangerous as far as  
25 society to the extent that it keeps people down and it's  
26 not the best alternative to how to live a good life, but  
27 given certain oppressive destructive natures of  
28 society, it may be a good solution. I'm just sorry  
29 that people have to choose that kind of solution rather  
30 than another and I don't know what a commission can do



1 to buy that kind of solution to make drug addiction  
2 less appealing by knowing it's not controlled.

3 The same way with education programmes.  
4 I think again they tend to be a matter of definition  
5 of imposing an order and do not consider the community  
6 needs. So I end with certain reservations, on using  
7 the law as a form of policy, I'm saying that we are  
8 hung up on the rule of law, we make everything good by  
9 passing a law with regard to it rather than facing  
10 other issues. I find that any solution cannot be  
11 successful or any kind of control cannot be successful  
12 as long as it is part of the values and structural  
13 arrangements that produced the problem to begin with.

14 THE CHAIRMAN: Why should the state  
15 assume responsibility for satisfying this demand? Why  
16 not leave it to the market, free enterprise? What's  
17 your hang up about free enterprise? To be fairly  
18 consistent why should the state take it on itself?

19 PROFESSOR QUINNEY: It is inequitable  
20 in that those who need drugs wouldn't be able to get  
21 it because of the money. Further, they would have to  
22 engage in illegal --

23 THE CHAIRMAN: Why should this demand be  
24 placed on a higher level than other consumer demands?  
25 It's a luxury, a form of indulgence, why should the  
26 state make it more accessible and on more easier terms?  
27 I don't follow it. What is so special about this demand?  
28 Why shouldn't the state go into the tobacco business?  
29 Why shouldn't the state go into -- into the T.V. business  
30 and make sure there are more people that can afford it?



1 PROFESSOR QUINNEY: I suppose because of  
2 the problems it creates that the state does not somehow  
3 help this demand in creating other kinds of crimes. You  
4 know, ultimately it would be good that society could  
5 change so that there would be no demand and I think a  
6 step in that direction --- I'm not sure, you know, you  
7 caught me there because on the one hand I argue you  
8 satisfy this demand and it's actually answering the problem  
9 that's kind of keeping people being an addict but I don't  
10 think you're going to get them off of addiction by trying  
11 to control them by making them criminals or by trying  
12 to rehabilitate them. I am really pessimistic on what  
13 you can do.

14 DR. LEHMANN: Are you pessimistic because  
15 you are kind of turned off because society got itself  
16 into this and now, well, let them get out of it somehow,  
17 it's too late anyway, or are you pessimistic because  
18 you really feel quite unemotionally that the best policy,  
19 or as good as any, is a laissez-faire policy now because  
20 no matter what you can do you can't do any better?

21 PROFESSOR QUINNEY: You see, I am not  
22 into a laissez-faire. That's why I still come back to  
23 community and the community, determining its own form  
24 of social welfare. In the meantime if the state can  
25 prevent further harm then I think, you know, it can do  
26 it as a measure in between. But I think by control and  
27 further legislation or even keeping the present is  
28 really not furthering any solution.

29 DR. LEHMANN: Would you have any commital  
30 for anything on a federal level?



1 PROFESSOR QUINNEY: Criminal law where  
2 you have sanctions and you are penalizing people for  
3 doing things, I'm not sure how effective it is for one  
4 thing. All policy is a matter of law or some law is  
5 policy. You can have it as an educative function maybe  
6 but I don't think you need to go around putting people  
7 into prison or fining them.

8 You see, admittedly I have a certain  
9 conception of what man can be, that man is basically good  
10 rather than evil.

11 DR. LEHMANN: But man may have deterior-  
12 ated because of social ills. Something has to be done  
13 in the meantime.

14 PROFESSOR QUINNEY: That's what I'm  
15 assuming because of our institution.

16 DR. LEHMANN: Yes, but still something  
17 has to be done about it. You feel it will iron itself  
18 out if you just kind of let the community deal with  
19 it somehow.

20 PROFESSOR QUINNEY: I would be willing to  
21 bet on that then further control. Because I see what  
22 the law does. I mean the law was somehow this consensus  
23 devised that all the people wanted it. I see it rather  
24 as being the last resort to maintain the advantage of  
25 certain groups in society for their interest and in  
26 the process they destroy other people.

27 MR. EDWARDS: Do you have any views  
28 about the availability of criminal sanctions in re-  
29 lation to injuries, physical injuries to the person  
30 when there are no property considerations whatsoever,



1 simply the integrity of the human person as such?

2 PROFESSOR QUINNEY: Well, I think you know  
3 the most personal crimes the law -- well, this is  
4 debatable, does the law deter personal crimes or not,  
5 because they are personal, and one is going to murder  
6 his wife if he has to or not depending on what the state  
7 says he should do or should not do.

8 THE CHAIRMAN: Yes?

9 PROFESSOR BERTRAND: How do you see  
10 yourself as a sociologist when you compare your posi-  
11 tion, say, in relation to the criminal law to that of  
12 the crime who really sees the criminal law as a valid  
13 social representation? How do you deal with that?

14 PROFESSOR QUINNEY: That's nice. I'm not  
15 an intellectual on sociology but most of the social  
16 theory we have developed a hundred years ago or more as a  
17 reaction to the French revolutions, the revolutions of  
18 1848 and so forth in Europe where theorists were dis-  
19 turbed with the disorder and I would argue disorder  
20 that was occurring because of just grievances, things  
21 that had their place -- to overthrow monarchy, oppressive  
22 societies, what have you, and that social theory was a  
23 conservative reaction to justify law and order and I  
24 think we are still into that tradition, be it legal  
25 philosophy and sociology and psychology or what have  
26 you.

27 PROFESSOR BERTRAND: If you had lived  
28 in 1971 you wouldn't say that the legal (inaudible)  
29 valid social representation. Do I hear you correctly?

30 PROFESSOR QUINNEY: That (Durkind) would



1 not say?

2 PROFESSOR BERTRAND: If you were (Durkind),  
3 and if you ---

4 PROFESSOR QUINNEY: I would do the same  
5 thing that most social theorists are doing today,  
6 arguing -- opting for order with their definition of  
7 what is good social order and that's pretty much the  
8 status quo because order is better than disorder. It's  
9 opting for social order rather than individual freedom.

10 And what I'm trying to conceive is a  
11 theory that allows for man's potential, allows for  
12 change, you know, even revolution or whatever you call  
13 it, but is not an ideology for the status quo and that's  
14 what I see the most social theory we have as theorists  
15 knowledge and I see it as an ideology that tends to  
16 maintain order, order at the expense of much destruction  
17 to individuals.

18 THE CHAIRMAN: Professor Rosenthal?

19 PROFESSOR ROSENTHAL: I don't know where  
20 to begin. I think these issues are interrelated. Of  
21 course you talked about it in your Interim Report, the  
22 social responses with the legal response being only  
23 one. Of course, there are many types of legal response  
24 and not all of them are moral alternatives.

25 Let me jump in. Maybe I will get (inaudible).  
26 Marijuana. And at least to start with let's talk about  
27 grass as opposed to hashish and THC. As far as I'm  
28 concerned, I think my choice is limited to two alter-  
29 natives, basically a vice model with an emphasis --  
30 exclusively oriented against large scale distribution



1 as Professor Schwartz has mentioned, on the other hand,  
2 to use more concrete people of Professor Kaplan and the  
3 idea of regulation in a matter roughly similar to  
4 alcohol. I lean -- if I were in the States and if I  
5 were in California, I would certainly lean towards  
6 Professor Kaplan's view with a couple of qualifications.  
7 I don't know enough about the Canadian situation to  
8 speak with any more confidence because I don't know  
9 enough about your use and distribution problems, your  
10 social problems that are related to this and your  
11 social problems.

12 I do lean, as I said, if I were in the  
13 States, particularly California, I'd lean towards the  
14 regulation view and I don't feel absolutely sure and  
15 a couple of my reservations are these: First of all,  
16 I would want to see some very detailed alternative  
17 regulatory schemes because I think the details of regu-  
18 lation can affect in marginal cases at least, your  
19 cost-benefit judgment. I think -- more than I think --  
20 I feel quite strongly that you have to include in  
21 deciding whether you are going to go to a regulatory  
22 alternative what the attitude of the majority of the  
23 people towards what you are doing, whether you want to  
24 call this politics or not I don't know. I don't know  
25 whether you call it morals or not. Certain sociologists,  
26 and I'm thinking particularly of Dr. Joseph (Gustio)  
27 who has written extensively on outlawed prohibition in  
28 the United States, has put it another way. He talked  
29 about law having two effects, instrumental in terms of  
30 decreasing or having a bearing on the volume of the



1 conduct of laws to direct it against, but also symbolic  
2 and symbolic may be another way of saying morals. It  
3 may be the kind of thing where if you -- even if you  
4 could pass a certain law it might upset so many people  
5 and make them feel so insecure -- conceivably -- I'm  
6 not saying this would be the case for marijuana but  
7 it's something to be considered. It goes into your  
8 balance.

9                   The alternative to that would be a model  
10 much like Professor Schwartz's and much like, in fact  
11 stolen from Professor Kaplan's suggestion for vice  
12 model originally from California and then modified  
13 in your book. And basically we go somewhat  
14 like this: First of all there would be a certain  
15 quantity of possession that would not be a crime. John,  
16 if you want to throw anything in, you know, you can  
17 jump in at any time. That would not be a crime. I  
18 think you at one time suggested (8 ounces) given to  
19 traffic offences in California. That would depend on  
20 your trafficking patterns and your use patterns.

21                   Now basically even in California I guess  
22 8 ounces is a lot, but the idea is we are not only ex-  
23 empting use -- at least in the States the fact of the  
24 market is that you have small scale non-commercial and  
25 sometimes small commercial distribution among users  
26 just as you make your own wine during prohibition or  
27 even now and you maybe sell a little. In effect, to  
28 just make a distinction between possession for personal use  
29 and various types of distribution is unrealistic in  
30 terms of the realities of the use patterns. I think



1 you wouldn't be accomplishing very much. I think what  
2 you have to do is go one way or the other; that you  
3 either have to decide that there is going to be some  
4 sanction for small activities whether it's only personal  
5 use or whether it is small distribution giving a joint,  
6 giving a lid, or maybe even selling a lid, maybe at  
7 no profit, maybe for a little profit. I think basically  
8 you have to decide that you are going to -- even though  
9 logically you can distinguish between the distributor  
10 and the user, in fact so many users engage in some  
11 type of distribution that to have a realistic effect  
12 you have to exempt at least some of these small  
13 distributions. The most sensible way you can do it with  
14 marijuana I think is in terms of quantity of possession.  
15 Below certain amounts, no effects. As I said, this is  
16 not a distinction entirely between use and distribution,  
17 it's the small retail consumer end of it whether it is use  
18 or whether it's small distribution. It's both.

19 Accompanying that, would be a larger --  
20 excuse me -- a more severe offence, or perhaps a number  
21 of offences for sale -- sales and exchanges. Now,  
22 leaving out gifts. You might want to divide that into  
23 degrees. First of all, even on your sales you might  
24 exempt very small sales like sales of less than 1 ounce  
25 or sales of less than 1/2 ounce, given our trafficking  
26 patterns on the theory that this is the kind of retail  
27 thing you don't want to get indirectly. You would then  
28 have the basic offence of a sale and perhaps an aggre-  
29 vated offence based on more quantities. Quantities  
30 are not perfect. There are a lot of objections to them.



1 To some extent as you know dealers can control the  
2 quantities they possess or that they have and deal  
3 with just below the minimum. But as one of the Wooten  
4 Commissioners in Britain said "That's just fine, the  
5 more difficult you make it the better I like it."  
6 And this is rough. A quantity is very rough but I  
7 think as far as this goes, it's right, you might have  
8 two different offences and you might exempt small  
9 sales in the 1/2 ounce - 1 ounce range and then to  
10 degrees on top. I think you probably should have a dis-  
11 tribution to minors offence and that's distribution as  
12 close to sale or exchange because your interest here in  
13 terms of control is making sure minors don't get it.  
14 To what extent it is successful is another question.

15 Now the idea behind this is not to  
16 eliminate the use of marijuana or whether that is  
17 desirable or not. The idea behind it is basically,  
18 in my judgment, the most you can do is control and the  
19 question is levels of control. I think these two  
20 devices, vice model and the regulatory devices are  
21 different ways of handling that. I don't think going  
22 beyond the vice model, punishing possession, punishing  
23 gifts, I think by doing this you increase certain social  
24 cost we would like to get rid of, at least I want to get  
25 rid of. Now this is a balancing, it's not perfect,  
26 in fact you are compromising and one of the things you  
27 sometimes run into in a compromise, of course, is that  
28 you get nothing, you don't solve either problem. On  
29 the other hand, sometimes you do take the pressure off  
30 both problems enough to make it palatable. And some-



1 times I think civilization just means tolerable. We  
2 can't expect much more.

3 DR. LEHMANN: We are dealing with mari-  
4 juana?

5 PROFESSOR ROSENTHAL: Yes, that is just  
6 marijuana. I have questions about hashish. People have  
7 said that hashish could be included the same way, with  
8 different quantity of that hashish is so different with  
9 regard to potency and I recall in your discussion  
10 with respect to your potency power distinction, that  
11 it should be treated differently. I do not have a  
12 strong feeling on that. I'm wishy-washy both ways.  
13 In addition, on pot, I think I have another idea which  
14 I have a question about, but let me just suggest to  
15 you, on top of your sales offences it's possible you  
16 could have an aggravated adulteration offence with a  
17 more serious penalty for adulteration and I think this  
18 would be partly educational. I'm not sure whether you  
19 should or you shouldn't, but I think it is a  
20 possibility. I think you do want to insure us because  
21 people are going to be using this, hopefully not  
22 everybody, that the product be rather pure. On the  
23 other hand the easiest way to do that would be to  
24 regulate it but we're not going to go that far because  
25 of the different balancing of costs and benefit. To  
26 the extent that the criminal law in this matter could  
27 have either a deterrent or educational effect on  
28 adulteration advance of the substantial import, even  
29 if it's not used too much may have some educational  
30 matter on the market, I don't know. In addition if you



1 had it, it's not enough to have it on the books. I  
2 think there should be a vigorous enforcement policy  
3 against adulteration cases. You come across them in  
4 enforcement probably by accident, you get a sale case,  
5 and it turns out the stuff is adulterated. And then  
6 you have the administration problems, what are you  
7 going to do about that? But I think if there was a  
8 vigorous well publicized forced policy against adultera-  
9 tion you might pick up something with the drug using  
10 community in the sense that make them even more aware  
11 of the risks involved in this kind of activity. And  
12 while I said this about pot, this would even be more  
13 applicable to prohibitory schemes, directed against  
14 other drugs which I would not consider at the moment  
15 legalizing or regulating.

16 For instance, LSD and what have you. I  
17 think on top of your criminal sanctions, generally, I  
18 think I would like to see a strong adulteration offence  
19 as a moral, educational, as well as a deterrent thing.

20 Now, on some of the other drugs ---

21 DR. LEHMANN: Excuse me for a moment.  
22 With cannabis, if you will -- or you said it wouldn't  
23 make any difference to you whether cannabis would  
24 include hashish and THC?

25 PROFESSOR ROSENTHAL: I couldn't make  
26 up my mind.

27 DR. LEHMANN: But supposing that you  
28 would make up your mind that only marijuana, grass  
29 should be legalized?

30 PROFESSOR ROSENTHAL: I'm sorry, did



1 you say legalized or the vice, the limited criminali-  
2 zation?

3 DR. LEHMANN: Limited criminalization,  
4 what would you do about people who tried to extract  
5 THC or make hashish by concentrating? Would that  
6 be an offence?

7 PROFESSOR ROSENTHAL: I'm sorry, I left  
8 out your manufacturing offences, I just forgot them.  
9 I think your manufacturing offences on the whole  
10 should be significant offences, but I think manufac-  
11 turing should be defined again like trafficking in a  
12 narrow way. I think extracting THC is significant.  
13 On the other hand, some manufacturing offences in  
14 the States are defined so broadly if you roll your  
15 own cigarettes technically you are a manufacturer.  
16 Particularly where the manufacturing is directed, and  
17 there are ways to tell this, towards commercial  
18 distribution, I suspect if you grow a little of your  
19 own grass it could be either no offence or more likely  
20 a minor offence.

21 PROFESSOR SCHWARTZ: Could I ask a  
22 question at this point? Your suggestion of tiered  
23 offences raises for me the problem of what alternatives  
24 you have under Canadian law. For instance, do you have  
25 a misdemeanor typical of what maximum penalty?

26 THE CHAIRMAN: We don't have the dis-  
27 tinctioning felony "misdemeanor". But we do have the  
28 distinction between indictable and summary conviction  
29 offences; they are both criminal offences but except ---

30 PROFESSOR SCHWARTZ: What is the maximum



1 imprisonment entailed?

2 THE CHAIRMAN: Our criminal law is all  
3 federal and there is no limit on the federal government's  
4 power to impose penalties but in practice, the  
5 dividing line is two years, in effect.

6 DR. MOHR: Six months.

7 THE CHAIRMAN: Above that you go to  
8 federal penitentiary. Summary conviction, six months.

9 MR. ACKROYD: I think the summary con-  
10 viction says \$500 or six months or both unless other-  
11 wise stated.

12 PROFESSOR KAPLAN: There's not maximum  
13 under an indictable offence?

14 PROFESSOR SCHWARTZ: I'm very much con-  
15 cerned about that and in general I could underwrite  
16 everything that Dr. Rosenthal has said, but I'm very  
17 much concerned with the problem of maximum sentences  
18 that are associated with a tier of offences like this.  
19 I, for example, believe that six months is an excess-  
20 ive maximum and if you are to have short term imprisonment  
21 at all it's only virtue is the short shock and that you  
22 really have it at the -- I would say almost when the first  
23 gates climb but certainly not longer than 30-60 days.  
24 Six months maximum strikes me just in the wrong place.  
25 It is much too long in its impact on family, employment  
26 and so on and not nearly long enough if you really  
27 envision a rehabilitation programme.

28 And on the other hand, if you go from  
29 there to, what, 5, 10 years, I'm very much concerned  
30 with that. We can't solve that problem, it's not



1 unique to drugs but I just want to enter a caveat  
2 about this tier of offences.

3 PROFESSOR ROSENTHAL: On that, I sketched  
4 out a little more detail about this type of partial  
5 criminalization, vice model, but I'm not ruling out, in  
6 my judgment, the regular alternatives, the regulation  
7 roughly in the same way as alcohol. But these are the  
8 two choices I choose between with marijuana. I wouldn't  
9 go any further in terms of cost and controlling.

10 Now other drugs may present different  
11 issues and on opiates and heroin, this morning I men-  
12 tioned that at least until you have tried, on a major  
13 scale, and I don't know what the situation here is in  
14 terms of trying, the history, I would not dispense  
15 heroin to addicts at least until it is quite clear  
16 that dispensing longer acting opiates, like methadone,  
17 in terms of the rush and the effects that we talked  
18 about this morning, will not get you the kind of results  
19 you are willing to settle for, whatever those results  
20 may be and whatever your values, as the kind of maximum  
21 problem you could tolerate. If that is a failure then  
22 you might have to, some time in the future, after the  
23 life of this Commission, somebody might have to consider  
24 whether you have to go the whole hog and dispense heroin  
25 or demoral to addicts. But initially I would see, if  
26 you can't get the problem within socially tolerable  
27 amounts whatever your judgments of toleration are, by  
28 users sticking to dispensing of the longer acting  
29 opiates. And at least judging from American experience,  
30 I put it another way. I would think dispensing of



1 longer acting opiates on a large scale is called for,  
2 based on the American experience. I cannot speak on the  
3 Canadian experience. It's definitely called for. How  
4 you do it, how restrictive -- it shouldn't be restrictive  
5 enough so that it's not going to have any impact but  
6 the details are another question and it would probably  
7 take a great deal of working out and you will probably  
8 have the problems of flexibility, of rigidity, different  
9 goals, different programmes, is it just a prime control  
10 measure, property crime, prostitution, or are you  
11 trying to aid a productive life and whether you're  
12 talking about levels, a blockade, things like this. But  
13 in the principal, I think, or at least in my judgment  
14 on the American experience, this is called for on a  
15 large scale level, even if it is to fail, I think, at  
16 least in the States, we've reached a point where you  
17 can't crap around anymore.

18 THE CHAIRMAN: I just would like to  
19 clarify a point so one shouldn't take away an erroneous  
20 impression, the point on summary conviction, if no  
21 imprisonment is specified, the limit is six months,  
22 but in fact in the drug cases, they've gone beyond that  
23 and several cases for a second offence it's up to one  
24 year and in some cases up to 18 months, so there's no  
25 constitutional limit.

26 PROFESSOR ROSENTHAL: The basic impact  
27 of that is whether it's going to be a federal institu-  
28 tion or a local institution?

29 THE CHAIRMAN: No, you see, our criminal  
30 law, the difference between Canada and the States is



1 important in this respect. Our criminal law is entire-  
2 ly federal. The jurisdiction is federal law. We do  
3 have a thing called provincial criminal law, but  
4 technically those are penal offences attached with some  
5 otherwise valid provincial legislation and the federal  
6 parliament has complete power with respect to penalty.  
7 We don't even have -- no, I shouldn't get into the Bill  
8 of Rights here now -- well, we do have a provision  
9 but it hasn't been tested yet as a limit on our  
10 criminal code but if you look at some of the panalties  
11 here, up to life. The assumption is, there is no  
12 limit.

13 PROFESSOR SCHWARTZ: I wasn't addressing  
14 myself to constitutional limits. I just meant associated  
15 with any recommendation you make, I hope will be very  
16 much restricted maximum penalty, nothing like what you  
17 have in your -- summarized in 373.

18 PROFESSOR ROSENTHAL: I gather what you  
19 are saying goes not only to the short term deterrent  
20 type of thing but also as a felony.

21 PROFESSOR SCHWARTZ: Yes. They have a  
22 mandatory minimum in here of 7 years, for example, and  
23 they have life imprisonment for trafficking. Unless  
24 your judges, different from our own, have a sort of  
25 consensus which animates them all on the maximum to be  
26 imposed, this is ---

27 PROFESSOR ROSENTHAL: Talking about this,  
28 I don't know what the Canadian constitutional situation  
29 is on this but on this question of disperity which I  
30 think is one of the things you're getting at, let's



1     suppose your maximum is 7 years, or life, even worse,  
2     with no minimum, I guess we all know that whether you  
3     are talking about drug criminal law or other criminal  
4     law, one of the major problems in terms of rehabilitation  
5     and all kinds of problems is sentencing disparity. And  
6     if you could come up with some kind of criteria, even  
7     not binding necessarily, but guidelines on sentencing,  
8     particularly where you have wide limits between  
9     minimum and no minimum and maximum and at least some  
10    guidelines to try to reduce the sentencing disparity.  
11    You have some sort of appellant review of sentencing?  
12    How successful have the appellant courts been aside from  
13    deciding individual cases and providing some guidelines?

14               MR. SOLOMON: Theoretically there are  
15    some controls. How effective are they in practice?

16               MR. HOGARTH: They are not really  
17    effective. Different courts of appeal find their  
18    own role in jurisdiction with each province and some  
19    interpret their role very restrictively in clear violation  
20    of law. Other courts seem to impose sentences taking  
21    caution in the first instances.

22               PROFESSOR ROSENTHAL: Here's what I'm  
23    really asking you, John, aside fr-m whether they reduce  
24    or increase, have the decisions really laid down some  
25    guidelines for the initial sentencing?

26               MR. HOGARTH: By and large the appeal  
27    courts are not only unhelpful in laying down decisions  
28    but definitely hurtful in trying to determine one  
29    thing and the other.

30               PROFESSOR KAPLAN: Typically trial judges



feel that way.

PROFESSOR SCHWARTZ: Trial judges always  
resent interference with that discretion.

I might mention an interesting alternative to mandatory minimum that we worked out in the reform to federal criminal law. If you are to have any such concept as a legislatively mandated minimum, and I am opposed to it, by the way, it would be my thought that the actual punishment administered within legislative limits ought to be left to the trial courts subject to effective review. But if you are to have any such notion that some crimes automatically entail imprisonment it would be much preferable to have a kind of (assumptive) rather than an actual mandatory minimum. At least that gives an opportunity for a trial judge to escape the mandatory minimum while indicating a kind of general legislative policy about the seriousness of the offence. I don't know whether I have compressed this too much but if you could replace the mandatory minimum of 7 years by some such concept as, a minimum punishment of 7 years is in order unless the case is one of special hardship or the judge otherwise finds that such punishment is not essential to the public safety. An escape clause is at least a good intermediate step. I am opposed to any such attempts at the trial stage to set a minimum, but you may or at least your legislature may be loath to leave it altogether in which case an escape clause would be much desirable.

PROFESSOR RYAN: There is a discretionary



1 I know of two young girls who were in the women's prison  
2 in Kingston who were convicted of importing who were  
3 given the minimum of 7 years each whereas a young man,  
4 a boy, who was also importing, they were all picked up  
5 at Montreal Airport and the boy was not charged with  
6 importing. He was charged with possession for the  
7 purposes of trafficking and given 4 years.

8 It is true though, John, tht some courts  
9 have laid some statements down of policy. For example,  
10 in B.C. the court of appeal has suggested there should  
11 always be a prison term or a jail term of some kind for  
12 possession; is that not correct? And the Ontario  
13 court --

14 MR. HOGARTH: The Court of Appeal of  
15 British Columbia got itself into the odd situation in  
16 two consecutive weeks last summer of dealing with  
17 marijuana possession more harshly than heroin.

18 PROFESSOR RYAN: The Ontario Courts have  
19 laid down a policy that there should be an appeal  
20 sentence for trafficking, pretty well.

21 THE CHAIRMAN: Professor Rosenthal? Do  
22 you have anything further?

23 PROFESSOR ROSENTHAL: I have a lot to say  
24 but I don't know how much time you want to take.

25 THE CHAIRMAN: We have until 5:00. I  
26 thought I would continue.

27 PROFESSOR ROSENTHAL: There are some  
28 particulars which ---

29 THE CHAIRMAN: We haven't heard anything  
30 about civil commitment.



1 PROFESSOR ROSENTHAL: Okay, on civil  
2 commitment I think this is important particularly with  
3 the opiates because it might affect -- might or might  
4 not have an affect. It could on your handling of the  
5 opiates and particularly on possessional offences; use,  
6 possession, small scale usage, addict trafficking.

7 Let me start with the opiates, and I guess  
8 the prototype is heroin which we basically really are  
9 talking about most of the time. I guess in the States  
10 the various types of civil commitment initiation pro-  
11 cedures that have been devised are really three or four  
12 types; the type where an addict not convicted of any  
13 crime or not charged with any crime can be subjected  
14 to -- and these are just two things that are drastically  
15 different, the felon can be subject, first of all, to  
16 involuntary commitment and of course also the whole problem  
17 of voluntary commitment and treatment. With the  
18 "voluntary", in the States in big quotes, because often  
19 the screws are put to the man, 5 or 10 years for  
20 possession and very often they prefer to commit them-  
21 selves for some strange reason.

22 THE CHAIRMAN: Before prosecution?

23 PROFESSOR ROSENTHAL: Before conviction  
24 or the charge may be dismissed. Their resolution often  
25 departs after they get to the institution.

26 This is one type. Let's leave the volun-  
27 tary aside anyway for the time being. The main thing  
28 that has drawn a lot of discussion although not used  
29 too much in numbers, is involuntary civil commitment  
30 of the addict not charged with crime or perhaps charged



1 with and not convicted with crime. In addition the U.S.  
2 Federal Government has civil commitment in lieu of  
3 prosecution for addicts charged with a crime who  
4 volunteer, "voluntary" with the agreement of the court.  
5 With after a certain period they "with success" the  
6 charge is dismissed or at least with some discretion,  
7 California has some -- California doesn't have any,  
8 New York has. The third thing is civil commitment after  
9 conviction in California and New York "civil", at the  
10 conviction of an offence. And the U.S. Federal approach  
11 is a little different. It's not a "civil commitment"  
12 but after conviction for some offences under the U.S.  
13 Federal Law there is sentencing to treat -- to commit-  
14 ment to treatment. In other words, it's done through  
15 a criminal sentence but to a treatment programme.

16 Now, on these things I think it's impor-  
17 tant whether it's voluntary even if voluntary doesn't  
18 mean very much, where validly voluntary. I think  
19 it's also very important, 1, to try and decide what  
20 you're trying to accomplish in terms of reason for  
21 the commitment; Is this treatment, and if it is treat-  
22 ment what are your goals? What is success? Is success  
23 to be measured solely in terms of abstinence from drug  
24 use, in terms of other things, in terms of both?

25 Secondly -- that's the treatment part  
26 of it. Secondly is it really in some part a preventive  
27 detention device? Many times in the States, and although  
28 the treatment may be part of the goal or one of the goals,  
29 it is really, at least in part 00 sometimes entirely a pre-  
30 ventive detention device. In fact, as John said, nice



1 prisons and you put the hospital sign on the jailhouse  
2 door. I think you have to decide if you're going to  
3 get into this what are you getting into, preventive  
4 detention, what treatment, or some combination of both.

5 My judgment on it, particularly for the  
6 addict who has not been charged with or convicted of  
7 a crime is that using my own personal values on treat-  
8 ment success, at least the experience with it would not  
9 warrant further extension as a treatment device.

10 MR. STEIN: Could I just interrupt for  
11 a moment. What are your criterion for success in  
12 treatment?

13 PROFESSOR ROSENTHAL: Okay, I'm putting  
14 aside the so-called voluntary programmes because I think  
15 you can -- in a voluntary programme you might be satisfied  
16 with a lot less in terms of whatever your criterion  
17 you would adopt because the deprivation of liberty at  
18 least may have some voluntary connotations to it.

19 But when you're talking about an invol-  
20 untary programme, particularly an involuntary programme  
21 that is either one -- either/or a substitute for  
22 criminal sanction or it might lead to a period of  
23 deprivation or significant restriction on liberty either  
24 in excessively alternative criminal sanction, or if not  
25 in excess, say in terms of length, in terms of severity.  
26 I think then, in order to make it justifiable, balancing  
27 the deprivation or balancing a lot of things including  
28 the deprivation against what is to be gained from it,  
29 then I think you have to have more stringent criteria.  
30 I wouldn't say the guy has to be drug free for 3 years



1 in our-patient care, after institutional care, not drug  
2 free, but I think I would want, say, for a 3 year  
3 period, not 1 year, not 6 months, not 2 years -- at  
4 least, at most, a use, insofar as the use measure is  
5 involved, that is, only occasion. And this is hard but  
6 sometimes it does happen.

7 And then you get to the question, what  
8 other criterion or success? Suppose the guy uses 3  
9 times a week which isn't very much but it's not very  
10 little but shows, by certain other measurement, that he  
11 may be more integrated in the community, working, pro-  
12 ductivity, this kind of thing, family life, this  
13 could be another measure of success. What I am against  
14 -- I think you -- I would want to see -- let me put  
15 it this way: I don't think you have to demand "heroin  
16 free". I do think that if you are not getting to do  
17 better with larger per cent than majority, great  
18 majority then occasional use measured by the  
19 use of criteria, it's not working in terms of the de-  
20 privation of liberty as a treatment programme. The  
21 preventive detention thing is a different issue. Then  
22 you have these other possible measures.

23 Now I think based on federal statistics  
24 and federal commitment programme in California statis-  
25 tics, they are not doing very well. Doctor, are you  
26 familiar with some of those statistics?

27 DR. LEHMANN: In California?

28 PROFESSOR ROSENTHAL: Yes.

29 DR. LEHMANN: Yes.

30 PROFESSOR ROSENTHAL: I think they have



1 shown over a 3 year period it varied originally from  
2 16% to 21% drug free over 3 years out-patient care,  
3 and now down to 25%. It dropped.

4 PROFESSOR KAPLAN: I had remembered it  
5 was lower than 25.

6 PROFESSOR ROSENTHAL: Lower than that.

7 DR. LEHMANN: That's pretty good.

8 PROFESSOR ROSENTHAL: That's pretty good  
9 relative to other things.

10 PROFESSOR SCHWARTZ: It's largely a  
11 function of the intake screening.

12 PROFESSOR ROSENTHAL: If you have more  
13 control, more supervision, more spot urine tests then  
14 you have more checking, you can call it rehabilitation  
15 or anything else. From the treatment point of view I  
16 have -- I'm against that, I'm against it. Now in lieu  
17 of prosecution I am willing to put up with when the  
18 addict has the choice whether he will choose to face  
19 the criminal charge or go into the programme. Now, as  
20 long as the length of restriction of liberty and the  
21 conditions are not more severe in either length or  
22 restrictiveness, then the criminal alternative, and  
23 this, of course, is a dilemma that New York faced  
24 as early as '62 because this is fine where the criminal  
25 charge carries several years possibility of sentence.  
26 Even there there may be some problems. But where the  
27 criminal charge is a minor charge, the commitment might  
28 be -- would be longer probably, the restriction on  
29 liberty, anyway, than the criminal charge, and the result  
30 is practically, giving the addict the option in this



1 kind of plan, he's usually not going to like it.

2           The same thing with some sort of civil  
3 commitment after conviction, I think I have the same  
4 views as the treatment; - if you look at the treatment  
5 aspects, leaving aside the social prevention aspect,  
6 and I think this has to be stressed too. I meant to  
7 mention this at the beginning and that is this: I  
8 don't know who said it but it's very true: Civil  
9 commitment is nothing more than a procedure to get people  
10 into something. Civil commitment is not a treatment  
11 programme, you could have a civil commitment -- a  
12 thousand or two thousand civil commitment programmes  
13 solely with institutional care, with institutional  
14 followed by after-care, intensive out-patient supervision.  
15 You could have one with -- and you have with some  
16 methadone maintenance, some New York acts, some California  
17 acts, some federal acts are in the programme. The  
18 government has its screws on them but in effect they  
19 are in methadone and similar programmes. So it's hard to  
20 talk about civil commitment in the abstract because, as  
21 I say, it's just a way to get people in, in many senses.  
22 It's not a treatment programme. You could run a  
23 similar treatment programme with many different legal  
24 handles on it. Sentence them to methadone maintenance.

25           Now I think preventive detention thing  
26 is a toughy. What are you trying to prevent? And I  
27 think the general answers to that question have been  
28 1, the contagion or spreading of addiction through from  
29 addict to addict. That's one thing. Addict criminality.  
30 I guess that is the other main thing.



1                   On the contagion of addiction there have  
2 been all sorts of arguments pro and con to what extent  
3 addiction really fits the model of the typical contag-  
4 ious physical disease and to what extent it doesn't. I  
5 don't propose to get into them. I think by and large  
6 maybe there is a lot of nit picking, on both sides.

7                   I do think that there may be some value  
8 in considering the following point and that is this:  
9 It was said to me by Doctor John (Finler) who was for  
10 several years evaluating the California programme. He  
11 was head of the research for the California programme  
12 and now with the Urban Medical School, University of  
13 California.

14                   PROFESSOR KAPLAN: Riverside.

15                   PROFESSOR ROSENTHAL: Riverside. And  
16 what he said is this on the contagion thing: And I  
17 think this may be more than nit picking; that given  
18 the kind of society that we have in terms -- and you  
19 have -- "we" being all of us -- in terms of surveill-  
20 ance, relative freedom, it is very hard to pick up  
21 enough addicts relative to addict population -- you  
22 can still get a big bunch of addicts to really have  
23 that much impact on contagion of addiction. Even if  
24 you get half of them that's a lot of addicts, particular-  
25 ly if you are in New York or California, but if you  
26 have half roaming around you are not accomplishing  
27 very much.

28                   The second thing I would just like to  
29 mention is the problem of preventive detention on  
30 addict criminality, property crimes, addict trafficking,



1 prostitution and what have you.

2 I have a great deal of trouble with it,  
3 I think basically I see at least two initial questions  
4 and maybe more -- three actually, one is any preventive  
5 detention appropriate and of course we have some  
6 mixed systems, we have it in the mental health system  
7 in our country. The second question is for what and  
8 for what may break down here on several levels: For  
9 violent crimes against a person, that would be my  
10 clearest case. Then you get to property crimes and  
11 never for property crimes, which I'm inclined to think  
12 worked; on the other hand, if you are overwhelmed by  
13 property crimes, like for instance a police strike where  
14 you really have -- or looting in a riot, where you really  
15 have such a volume of property crimes that you have,  
16 in effect, a major social problem, maybe there is some --  
17 or at least theoretically, in my judgment, for some  
18 intervention against property crime, but then I would  
19 think it would depend on how great your problem was and  
20 certainly not for prostitution. Now how is prostitution  
21 handled in Canada? Is it, in effect, a summary offence  
22 to be a prostitute?

23 PROFESSOR RYAN: Not to be a prostitute  
24 per se. To solicit.

25 PROFESSOR ROSENTHAL: To solicit. It  
26 would seem to me sort of silly to commit them for three  
27 years as an addict, the prosecution is really the ultimate  
28 aim. Then you get into the whole problem of prediction.  
29 Now I can see that for addicts and particularly for ghetto  
30 addicts as opposed to middle-class addicts the prediction



1 problem, at least in grass sense, is easier than for many  
2 other criminals, but it's still not perfect.

3 At the very least, I would commit all  
4 addicts to preventive detention if I was -- whatever  
5 you're trying to predict I would like that written  
6 into the statute just like in the Mental Commitment  
7 Statute, mentally ill presents a risk of certain degree  
8 of injury to another or himself, with the caveat that  
9 even if you do this, clinical judgments as we know on  
10 prediction are very, very dangerous and if you got into  
11 any prediction, basically it would be better to develop  
12 some prediction tables, some actuarial experience tables,  
13 and once you had that body of experience at least I would  
14 feel more comfortable if they showed a certain -- what-  
15 ever degree of risk you think is appropriate and even  
16 then I would give the -- as Noble Morris who is not here  
17 today has written, I would give the person in this case,  
18 an addict, an opportunity to show that he is what Morris  
19 has called, a false positive, that he doesn't really  
20 belong even though he comes up on the actuality tables.  
21 Now that means you have got to have a real hearing. We  
22 don't do those kinds of things in the States very often.  
23 This is a real determination both on medical, social  
24 and in the courts and it costs money and you have to  
25 decide whether it's worth it. And I haven't even men-  
26 tioned the problem of defining what's an addict and I  
27 haven't mentioned the other drugs, whether you should  
28 convict speed users. I see an awful lot of problems  
29 with this.

30 THE CHAIRMAN: I'm wondering if we can



1 break for about 10 minutes, just to stretch, 7th inning  
2 stretch.

3 -- Upon recessing at 3:35 p.m.

4  
5 ---Upon resuming at 3:45 p.m.

6 THE CHAIRMAN: Ladies and gentlemen,  
7 could we resume?

8 I am going to call now on Professor  
9 Edwards.

10 John?

11 PROFESSOR EDWARDS: Well, Mr. Chairman,  
12 I take it that the purpose of our being invited here  
13 is somehow to ask us to put ourselves in your shoes  
14 and somehow to try to resolve some of these inponder-  
15 ables that obviously have faced you and which I  
16 think you have been helpful to us in that you have  
17 spelled these out in the Interim Report and have given  
18 us the chance to ponder these before we come.

19 May I say that I tried to look at the  
20 problems that face you in one of two directions. The  
21 first I think is whether the law as such, a statute law,  
22 requires the elimination of the prohibitions and the  
23 attendant penalties with respect to the range of  
24 psychotropic drugs which are your concern; or alternative-  
25 ly, whether mode of approach that perhaps is best  
26 capable to deal with the current situation is an all-  
27 eviation of some of these features to which we have  
28 turned out attention. And I have come to two different  
29 modes of approaching this problem.  
30



1 I regard always the questions of reform  
2 of the law as involving perhaps consideration initially  
3 of the administration of the law. Unless we keep this  
4 distinction uppermost in our mind I think we will tend  
5 to find ourselves boxed in the situation where we  
6 have to resolve between absolutes and I am afraid this  
7 is what statutory reform, legislative action involves.  
8 It is a dedication to either the perpetuation of the  
9 statutory law in whatever branch of the criminal law  
10 it happens to fall, or alternatively, seeking to pro-  
11 vide some alleviation to resort to the discretionary  
12 powers that are applicable at one of many levels in  
13 the administration of the criminal law, including  
14 law enforcement.

15 Looked at from this particular perspective,  
16 there is the consideration of law enforcement and the  
17 role and responsibility that society imposes on the police  
18 as the prime agents of the enforcement of its criminal  
19 law upwards into the ranks of the prosecutors, district  
20 attorneys, crown attorneys to the point of adjudication  
21 where the matter reaches the courts and the range of  
22 disposition that are available under, again, the laws  
23 set down by parliament.

24 Up to the present time there has been a  
25 belief that there exists a well prepared, thoroughly  
26 examined and well enunciated set of priorities or of  
27 policies governing the administration of the criminal  
28 law at each of these levels. I believe that we are be-  
29 ginning to be rather more honest with ourselves in  
30 recognizing that there exists a veritable vacuum when



1 it comes down to the formal exposition of the criteria  
2 that determine decisions and have just as much of an  
3 impact on the individual user, possessor, trafficker  
4 in the area with which we are concerned as the laws  
5 themselves. Can then the problem that faces the Commi-  
6 ssion be adequately resolved in our present state of  
7 knowledge? I have perhaps less confidence that some of  
8 the others who have spoken that in fact we have at the  
9 present time the available knowledge by which to decide  
10 changes in the statute law. I do believe that the  
11 amount of knowledge that has been placed before the  
12 Commission and which is contained in their Interim  
13 Report provides a more substantial body of information  
14 by which to set guidelines for the exercise of dis-  
15 cretionary power at each of the levels tht I have  
16 described.

17 What is not apparent, and perhaps this  
18 is one of those most difficult tasks of all, and that  
19 is the setting down in formal terms the relevant con-  
20 siderations that should prompt either the activation  
21 of a criminal law or simply leaving the criminal law  
22 inactive.

23 There is much, I think, that police  
24 clearly in their closer contact with the kind of  
25 situation which we have been examining can productively  
26 guide the actual exercise of police powers whether it  
27 is in relation to search, in relation to arrest or  
28 actually in laying informations to actually initiate  
29 the criminal prosecution machinery. But there has got  
30 to be, I think, a closer examination by the police



1 themselves of the precise policies that do presently  
2 govern the situation.

3 In the province of Ontario, and there  
4 are numerous police forces, it is, I think, all too  
5 apparent that there has been little or no attention  
6 paid to the formulating of these criteria. It has  
7 been a largely highly subjective matter approach.  
8 The one source where possibly the kind of education  
9 of police forces might be expected to be realized is  
10 our police college, the Ontario Police College. I  
11 don't think it would be unfair to say that if one  
12 examines the curriculum that presently obtains in the  
13 police college, education relating to the issues and  
14 approaches to this question is singularly absent and very  
15 little attention given to it.

16 So that if we are going to approach the  
17 matter of alleviation at the lowest level, contact  
18 between the police officer and your user or your  
19 addict or your trafficker, it seems to me that much  
20 can be done at that level.

21 And I turn to the next, the question of  
22 the actual control of the prosecution of these offences  
23 under the Narcotic Control Act and the Food and Drug  
24 Act.

25 We have a system in Canada that perhaps,  
26 if we examined it across the country, where the indi-  
27 vidual prosecutor is very much a law unto himself. There  
28 are those who seek guidance and do not receive it from  
29 above; those who seek guidance from their own efforts  
30 in seeking to understand the problem that they have



1 to tackle and there is very little help that has been  
2 given to them. There are other situations in which  
3 you have a range of philosophy of prosecution amongst  
4 individual prosecutors, that is as disparate perhaps,  
5 as the sentencing policies to which we referred.

6 I would hope that one of the recommenda-  
7 tions that might eventuate from this Royal Commission  
8 is the concern for developing prosecution policies  
9 with regard to these offences that gives the importance  
10 to what after all is one of the most controlling parts  
11 of the whole machinery of criminal justice.

12 PROFESSOR BERTRAND: I'm sorry, Professor  
13 Edwards, do I hear you correctly. Do you really say  
14 that prosecutors in this country do not follow rules  
15 that are set by the Department of Justice in relation  
16 to drug offences? Are you saying that?

17 PROFESSOR EDWARDS: I'm asking myself  
18 the question seriously as to whether the necessary  
19 guidance is provided, or to what extent it is largely  
20 an individual judgment on the part of the Justice  
21 Department's own prosecutor.

22 Quite clearly if one looks at the  
23 prosecution policies it obviously has changed and it's  
24 changing all the time. And if one looks at this across  
25 the entire country I think one sees reflected a  
26 disparity of approach that I think one must seek to  
27 find an explanation largely in the absence of the nece-  
28 ssary guidance. This is a wholly separate question  
29 as to the appropriateness of the guidance that is  
30 provided.



1 PROFESSOR BERTRAND: Or in various guid-  
2 ance. It can vary from province to province and it  
3 will still be disparate, right?

4 PROFESSOR EDWARDS: There is clearly,  
5 I think, a disparity of approach. It is a matter that  
6 I think I would be entirely prepared to ask if there  
7 is disparity is that desirable or not because I happen  
8 to believe that the whole value on the discretionary  
9 powers that exist is one that must produce flexibility.  
10 Uniformity, as such, has certain merits but all the in-  
11 trinsic merits I think are not to be found in a policy  
12 of uniformity but rather in a wise discretion exercised  
13 in the kind of cultural differences we have, the kind  
14 of indigenous situations that you are referring to  
15 and when it comes down to local communities it may  
16 well be that a greater sense of alleviation has not  
17 been a change in the subsequent law, but in seeking to  
18 relate the prosecution of the enforcement policies to  
19 the situation that exists in particular communities and  
20 that can be done to the prosecution machinery in a way  
21 I think that does not necessitate change in the subse-  
22 quent law.

23 DR. LEHMANN: Would this mean this  
24 machinery would amount to something like a clinical art  
25 of administering justice?

26 PROFESSOR EDWARDS: I believe that essen-  
27 tially what I am saying is this: That one was anxious  
28 to avoid the mandatory character of the law, both in  
29 terms of its invoked and also in its application of the  
30 penalties. I think the philosophy here that I am trying



1 to expound is equated on my part with the distrust of  
2 mandatory penalties, minimum penalties or otherwise.  
3 It doesn't provide that element of flexibility that I  
4 think is of the essence of the wise administration of  
5 the criminal.

6 MR. CAMPBELL: If I understood you, Mr.  
7 Edwards, on the one hand you deplore the lack of  
8 guidance given to the prosecutor and also ask for  
9 wider discretionary power. Where do you see him look-  
10 ing for guidance? My impression in Canadian practice  
11 is that in drug cases the prosecution is indeed guided  
12 rather rigorously from Ottawa and there is perhaps  
13 very little discretion allowed to the prosecutor as  
14 he goes into court. Where would you see him looking  
15 for this guidance to take greater account of the local  
16 (efficiency)?

17 PROFESSOR EDWARDS: The level of guidance  
18 is directly related to the level and quality of  
19 information that is as it were disseminated to those  
20 who have to make decisions. If this is communicated  
21 it can be done in several ways. My preference is to  
22 see these guidelines, this flow of information upon  
23 which judgment has to be exercised done in a manner  
24 whereby if there is any opportunity for evaluating  
25 the guidelines, that is, a possibility, at the present  
26 time I fear there is no way in which one can seek  
27 to evaluate either the quality or the significance  
28 of the information that is, as it were, passed down  
29 to those who had to make decisions.

30 THE CHAIRMAN: Do I understand you are



1 assuming there are in fact directions or directives,  
2 guidelines, but they are not visible, publicly visible,  
3 there is no way of evaluating them? Is that right?  
4 Is that a correct assumption; is that what you are  
5 saying?

6 PROFESSOR EDWARDS: The extent to which  
7 directives of a kind that are capable of being evaluated,  
8 obviously you must be seeing in the existence of some  
9 of evidence either by written directives or in the  
10 formulation, if you like, of a common philosophy wherever  
11 that derives. In the absence of that evidence it is  
12 impossible to evaluate.

13 THE CHAIRMAN: In other words, we have  
14 two bases for action here. We have the legislation  
15 itself and since a substantial discretion must be left  
16 to the various stages of the process we have as you have  
17 just put is philosophy or guidelines or general approach  
18 to the exercise of discretion which should be as visible  
19 as the legislation itself and as open to review and re-  
20 evaluation as the legislature itself.

21 How would this, the operation be made  
22 effective? Have you any suggestions for making this  
23 visible, seeing that it is articulated?

24 PROFESSOR EDWARDS: There are various  
25 ways, I think, of approaching it and one is by exerta-  
26 tion to the Minister, the Attorney General of Canada,  
27 and it is his agents, not the Justice prosecutors ob-  
28 viously who are functioning and exercising this respon-  
29 sibility and I think it's open for example, if one wishes  
30 to ascertain such directives or guidelines which is one



1 question. The other is as to whether there should be a  
2 desirable exhibition of these guidelines, is the  
3 questioning of the Attorney General in parliament. The  
4 Attorney General is not a law to himself. He is amenable  
5 to parliament and I think it's open to any member of  
6 parliament who seeks to secure such information and to  
7 inquire of the Attorney General of Canada as to what  
8 guidance, if any, if the Attorney General wishes to take  
9 the position that there is no obligation on his part to  
10 communicate this fact to parliament, and that I think  
11 would be a somewhat detrimental and unfortunate position  
12 if he were to take -- if, however, the Attorney General  
13 were prepared to disclose the directives under which his  
14 agents operate then I think an opportunity arises for  
15 the examination of the quality and content of those  
16 directives.

17 THE CHAIRMAN: John, do you see any  
18 problem -- I don't want to get into a constitutional  
19 discussion here -- but do you see any practical  
20 problem at first impression deriving from the fact that  
21 the administration of justice is placed under the provinces  
22 by the constitution although criminal procedure is a  
23 federal matter. Did you think there was any legitimate  
24 reason, legitimate, political, constitutional reasons  
25 for reticence on the part of the federal Attorney General  
26 to make a publicly perceivable role, or have a publicly  
27 perceivable role in these guidelines or policies? I  
28 just want your feel or your hunch on this as a person  
29 who is familiar politically.

30 PROFESSOR EDWARDS: Fortunately this is



1 a closed meeting.

2 My own reaction to that kind of question  
3 is that I find it difficult to appreciate the difference  
4 that exists between affording the provincial Attorney  
5 General exclusive jurisdiction over the enforcement  
6 of the criminal code and all of its offences and the  
7 restriction of the actual prosecution of offences under  
8 the Narcotic Control Act and Food and Drug Act which  
9 are equally emnations under the federal parliament,  
10 as has been in the control of the Attorney General of  
11 Canada.

12 PROFESSOR SCHWARTZ: Does your Attorney  
13 General or the Canadian Attorney General not follow a  
14 practice of publishing directives on prosecution policy,  
15 because this is done by the Attorney General in the  
16 United States and I am just asking the question: In no  
17 field is there a pronouncement about prosecution policy?

18 MR. HOGARTH: There are memorandums issued  
19 by the Assistant Deputy Minister of Justice federally  
20 that go to the full time general prosecutors.

21 THE CHAIRMAN: These are not public.

22 MR. HOGARTH: They are not public. They  
23 are policy with respect to bail and with respect to  
24 speaking to sentence and with respect to whether to  
25 proceed by more serious indictable procedures or  
26 summary convictions and there are policies that are  
27 shared and directed to the federal prosecutors but only  
28 known to them.

29 PROFESSOR KAPLAN: Let's fact it, the  
30 situation in the United States, they're given to the



1 federal prosecutors in a little book that is confiden-  
2 tial.

3 PROFESSOR SCHWARTZ: Is it labelled  
4 confidential?

5 PROFESSOR KAPLAN: I tried to take mine  
6 with me when I left the office and there was an enormous  
7 fuss about it.

8 PROFESSOR SCHWARTZ: The information cir-  
9 culates though generally, at least in my circle, the  
10 Supreme Court itself has referred to them as not public.

11 I'd like to ask whether there is an  
12 area perhaps in your federal district in which the Can-  
13 adian Attorney General has no limitation, no division,  
14 or even in the federal district does the Provincial  
15 Attorney General carry all of the responsibility?

16 THE CHAIRMAN: We don't have a federal  
17 district like you have, we have so-called national  
18 capital region but the provincial legislative juris-  
19 diction operates there as well for provincial matters.  
20 We don't have a unitary federal district. We do have  
21 the Northwest Territories which is unitary -- that's  
22 our unitary part.

23 PROFESSOR SCHWARTZ: What I was searching  
24 for was areas where the Attorney General would have  
25 acknowledged responsibility and where he would be free  
26 to publish guidelines in that area which would never-  
27 theless be influential by imitation elsewhere.

28 THE CHAIRMAN: He is in fact giving some  
29 instructions to federal prosecutors in this field and  
30 over the last year or so, possibly part as a result of



1 this Commission's work, there has been -- he has disclosed  
2 to some extent this policy.

3 For example, he was prompted to announce  
4 that there was a general policy, instructions concern  
5 ing first offences of simple possession and that they  
6 weren't demanding imprisonment and that kind of thing.  
7 But actually the position of the Attorney General of  
8 Canada in this field is not altogether an ambiguous  
9 constitution. It has been challenged and we haven't  
10 given yet careful consideration to this but there is  
11 some question about whether in fact the role reserved  
12 for the Attorney General of Canada in certain cases is  
13 a true matter of criminal procedure which would fall  
14 clearly in an exclusive federal jurisdiction or whether  
15 it touches the administration of justice which is a  
16 provincial matter. So you can see some fun could be  
17 had on this one, you know, up to the Supreme Court  
18 level. So I don't want to say anything more on that,  
19 I mean for the moment, because we have got to look at  
20 it and we haven't given it consideration.

21 PROFESSOR SCHWARTZ: To what extent do  
22 you have plea bargaining in this country?

23 MR. HOGARTH: Again, plea bargaining has  
24 not until very recently been a major way of resolving  
25 criminal matters. It has become that way in ordinary  
26 criminal code offences in large cities where in Toronto  
27 recently two of the senior crown attorneys were placed  
28 into the lower court exclusively to deal with, from  
29 the discussions with the director of public constitutions,  
30 to deal. But in the drug field there has been a



1 general tendency not to bargain as much compared to  
2 the crown attorneys bargaining around the criminal  
3 code matters. Whether that policy can be maintained  
4 in the light of the kind of backlog of cases is another  
5 question because certainly the backlog is growing. We  
6 are not getting -- we are getting a bigger inventory  
7 waiting to be processed.

8 PROFESSOR SCHWARTZ: Well, we have had plea  
9 bargaining, of course, to such an extent that legisla-  
10 tive mandatory minimum for example are evaded by filing  
11 several charges and forgetting about the one that  
12 demands a mandatory minimum. And more than that, we've  
13 recently seen the growth of a practice under which there  
14 is prosecutors probation, that is, a charge is not even  
15 made if the prosecutor is satisfied that the prospective  
16 accused might demonstrate his reliability by a years  
17 good behaviour.

18 MR. STEIN: Does he report?

19 PROFESSOR SCHWARTZ: Does who report?

20 PROFESSOR KAPLAN: Prospective defendant.

21 PROFESSOR ROSENTHAL: The prosecutor does  
22 in cooperation with the probation officer.

23 PROFESSOR KAPLAN: Let me at another  
24 level of sophistication. That is the prosecutors now  
25 call for mandatory minimums in legislative enactment  
26 on the ground that they don't really want to enforce  
27 them. But it is an enormous aid to plea bargaining.  
28 In other words, when you can threaten a defendant, if  
29 you go to trial before a judge and get convicted, the  
30 judge will have to give you two years.



1 PROFESSOR SCHWARTZ: It's like this  
2 pressure I was speaking about this morning. In other  
3 words, if you make it a felony.

4 PROFESSOR KAPLAN: So that they can deal.

5 THE CHAIRMAN: This seems to me a very  
6 fundamental issue coming back to what John was saying  
7 and I get the suggestion, John, from your statement  
8 that we should explore -- there is a good deal to be  
9 done to explore the potential for alleviation by  
10 better definition, public definition of criteria, guide-  
11 lines for the exercise of discretion at the various  
12 stages of the criminal process. Now we run into, it  
13 seems to me, where this is attractive, but when you  
14 raise it, we run into precisely this reaction. We want  
15 the perception of the law to be imprisonment for life  
16 which of course doesn't reflect I should have added --  
17 it doesn't begin to reflect the rigour of our law  
18 enforcement in this country. We want the perception  
19 to remain that way. We will hold a bargain of our  
20 own approach in the exercise of discretion. I mean  
21 what is the reaction? You know, thinking of the  
22 necessities of law enforcement, thinking -- if you're  
23 going to be in the criminal law business you want to  
24 be effective. That's what we are hearing around the  
25 table. Otherwise, get out of the business. What is  
26 the answer to that reaction?

27 PROFESSOR EDWARDS: I was struck by the  
28 apparent inconsistency of the Commission in its Interim  
29 Report where if one compares the stand that you took in  
30 paragraph or section 450, with paragraphs 456 and para-



1 graph 466, "The law which appears to stand on the  
2 statute books as a mere convenience to be applied from  
3 time to time on a very selective and discriminatory  
4 basis to 'make an example' of someone, is bound to  
5 create a strong sense of injustice and a corresponding  
6 disrespect for law and law enforcement. It is also  
7 bound to have an adverse effect upon the morale of law  
8 enforcement authorities." If you compare that position  
9 as a position you take in paragraph 456 and 466 where you  
10 say, let's alleviate the situation by a more informed,  
11 more equitable application of the discretion to which  
12 I am referring.

13 THE CHAIRMAN: Not necessarily discrimina-  
14 tory.

15 PROFESSOR EDWARDS: This is the whole  
16 point. This is why I think you are inconsistent. If  
17 in fact you take the position that the exercise of  
18 discretion is in itself nondiscriminatory, there is the  
19 nub of the question. And I think you have got to take a  
20 position one way or another, and if you accept the  
21 philosophy of discretion, and to my mind it is all  
22 important that that become as visible as the actual  
23 adjudication in the courts is, when matters reach that  
24 stage.

25 Now, when the Chairman says that is  
26 surely going to negate all of those principles that  
27 (inaudible) law enforcement, I'm not persuaded that the  
28 law enforcement authorities at the different levels that  
29 I have described are as adverse to the exercise of dis-  
30 cretion. Obviously they have been torn themselves



1 between two schools of thought, those which maintain that  
2 there has to be simply an automatic enforcement, an  
3 automatic application of the law which really doesn't  
4 make sense and those who maintain "Yes, we do exercise  
5 discretion though we don't make it visible." I think  
6 confidence in the administration of criminal justice  
7 demands the maximum level of visibility. In the  
8 policies and in the principles and in the actual exer-  
9 cise whether that be a police officer and a suspect  
10 or the prosecutor indulging in plea bargaining with  
11 counsel or with an individual accused. If these pro-  
12 cedures are desirable then they must be capable of  
13 critical evaluation.

14 THE CHAIRMAN: Hans?

15 DR. MOHR: I think I would like to try  
16 and drive John's point just a little bit further and  
17 that is in listening today around the table, the  
18 conception of law expressed -- in using the (inaudible)  
19 model as an instrument of control -- when you say for  
20 instance the effect that we should get out of it, I'm  
21 not so sure. With the other model of process, due  
22 process, but again I think is kind of mitigated control  
23 model to say you don't control everything but you have  
24 a process going that demonstrates enough what is  
25 permissible and what is not so that society could go  
26 on. It seems to me there is an underlying assumption  
27 and I see it perhaps more than others, the 19th century  
28 thinking between the lines. But the underlying assumption  
29 is that we really know, we know the values, we know what  
30 is going on and all we need to do is to instrumentalize



1 this knowledge and I think in terms of, from our state-  
2 ments like rapid social change and so on, in fact it  
3 seems to me that the less and less we know, (inaudible)  
4 that the law is not the proper process of producing  
5 social knowledge. I think the law is and I wonder  
6 whether one could not look at the criminal law in this  
7 regard of indeed finding out what is going on and  
8 it seems to me that they are the processes I would  
9 like to see, that the knowledge is on the street, that  
10 those that participate in the knowledge are for  
11 instance the police officers who are right there. And  
12 there I give concern to what John mentioned, the whole  
13 question of law and of information. I think we all  
14 share the concept that criminal law is not only what  
15 the courts do as the realists say, but what the justice  
16 system does.

17 But if the flow of information goes freely  
18 from bottom to top and then I'm sure you have the other  
19 things that John mentioned in terms of having policies  
20 that you institute. But I'm really concerned about  
21 the information flow from the street to the police  
22 officer. It seems to me it's really involving this flow  
23 and therefore they cannot get accumulation of knowledge  
24 with the oft changing scene on the street -- what the  
25 fact is. So I would say one could not look at the  
26 process when one speaks of (inaudible) or disability.  
27 Discussion again is what counts. Especially in terms  
28 of control, it seems the expression of what is important  
29 for us to look at, what is it that concerns us and  
30 therefore w-at can we pick up as we go on the street,



1 so that in this process, in the legal process we have  
2 a chance to really examine what is socially sound. It  
3 seems to me that in the law that is what it was initially  
4 intended to do and we've come a long way from it. And  
5 therefore this visibility is not just visibility in terms  
6 of equity and justice but visibility in terms of what  
7 concerns us. It's this kind of visibility which I  
8 think has been diminished by the various expertise  
9 functions, expertise in (inaudible) function whether  
10 it's performed by the police or whether it's performed  
11 by the psychiatrist in the clinical field; keep things  
12 that really should concern us and (inaudible) type  
13 of life, keep it away from us and therefore impoverish-  
14 ment of the community as such because if we keep that --  
15 these things out of our sight and these things out  
16 of our lives then we are impoverished by it. It is  
17 only handled by experts and not by the social processes  
18 as such, and then accordingly, society must suffer.  
19 So in order to bring this back into the social position  
20 brings up the question of ability.

21 MR. STEIN: Just on that, I'm a little  
22 confused because one of the things we've constantly  
23 heard is the people in law enforcement are not really  
24 handling problems on the street and they are irrelevant  
25 to them and that people in psychiatry are completely  
26 out of touch, and I don't see how they are really  
27 blocking the flow of information.

28 DR. MOHR: But that's exactly the point.  
29 You see, law enforcement -- a police officer used to  
30 be known as a police officer and now he's known as a



1 law enforcement officer. Now you say they are not  
2 effective, but in reality if you look closer at it  
3 that's symbolically of leaving it to them, and this  
4 sense of ---

5 MR. STEIN: In other words, whether they  
6 do anything about it or not isn't the point, it's that  
7 people assume that they are the ones that will handle  
8 it.

9 DR. MOHR: That's right. The assumption  
10 is (inaudible).

11 MR. CAMPBELL: There are apparent dangers  
12 here and they stem from Professor Quinney, what he said,  
13 that is simply the reality in which the person with  
14 the discretion or authority operates and this reality,  
15 it seems to me, has two sources of danger. First of  
16 all when we talk about our judges and we talk about  
17 our prosecutors or the police as properly exercising  
18 wide discretion of authority, at least this becomes  
19 sound as we think of these sensitive, acute observers  
20 of the society; that not only as people are the  
21 enormously sensitive people but they are people who  
22 are open to the changes in their community and are  
23 placed in positions not only where they get the flow  
24 of official opinion but also the sensation about the  
25 milieu that is there. I wonder first of all based upon  
26 what we know about our judges and our prosecutors, on  
27 the basis of our own work, is it realistic to think of  
28 these people as the sensitive, reformed, open and  
29 exposed people? And then I am concerned too with the  
30 appearance of justice. Now, one of the problems, I



1 think, with drug laws has been the perspective shared  
2 by many drug -- younger drug users that those who enforce  
3 the law are in fact in a very different reality than  
4 their own and it's one thing for them to look on a  
5 body of law as something that is a historical constitutional  
6 remnant that reflects the past.

7 PROFESSOR BERTRAND: The younger one?

8 MR. CAMPBELL: The younger one. But at  
9 least the thing's there and it's clear and it's dated  
10 and you can hope to change it. But would there be a  
11 real risk of a sense of anxiety about their ability  
12 with their reality and their perception to influence  
13 this much more nebulous thing, that body of prosecutors,  
14 that array of judges that they can't get at to in-  
15 fluence even to the extent that they might hope to get  
16 at the legislator or the House of Commons as a frame  
17 of law and this would worry me in two things.

18 The police, again, to the extent that they  
19 have wide discretionary power in terms of the definition  
20 -- rightly or wrongly it seems to me the definition it-  
21 self has a real importance here in the eyes of the  
22 public that the police are likely to approach with  
23 reference to this law -- that that definition may create  
24 again a very real anxiety about justice and about the  
25 basis for their discretion. And again I would raise  
26 the same question about the police as I raise about the  
27 judge and the prosecutor. Can we say that the policeman  
28 who will use this discretionary power widely, is this  
29 sensitive acute constantly awake observer and is he  
30 able to somehow get himself out of the bureaucratic



1 structure of the police, out of that perspective that  
2 comes from day by day association with the police --  
3 the other police who are his friends, his colleagues,  
4 who share experiences to get these other perspectives,  
5 I suspect the nature of police work like the nature of  
6 any other profession entraps one within itself.

7 DR. MOHR: (inaudible) where you have  
8 police officers in the courts and face them with  
9 these ideas and you find at the beginning because of  
10 the definition of their situation and the definition  
11 of their work they are desensitized.

12 MR. CAMPBELL: What happens when we  
13 do sensitize the cop? What happens when we get the  
14 cop as the social critic, the social questionner, the  
15 questionner of the police roke, we get him upset about the  
16 kids he's dealing with and what happens to him? That  
17 way it appears most apt to produce the brutal conduct.  
18 I think our evidence is in this direction again.

19 MR. HOGARTH: We have here, I think, at  
20 the table two of the police officers most primarily res-  
21 ponsible of any in Canada to try to develop a different  
22 kind of mental approach to a job among police officers.  
23 Jack Ackroyd is getting into community relations and  
24 things going in Toronto and Ken Paul is in a different  
25 kind of an organization in Halifax. I would like to  
26 have them say something on this.

27 MR. PAUL: Mr. Campbell, if we look at  
28 the role of the police officer he has to make -- you  
29 know, we give him certain powers to begin with. All  
30 right, when you get down to the street level this may



1 be a crude way of explaining or trying to show --  
2 actually he is judge, jury and executioner right there.  
3 This is what his role is. He is going to make the  
4 decision whether he should take that man's freedom.  
5 This is a major decision. He is not given -- you  
6 know, you don't make these decisions -- you don't sit  
7 down and say "Well now maybe later I'll arrest him."  
8 The arrest is made there and then and there is just  
9 no way around it.

10 He's also thrown into situations where there  
11 isn't a day going by where he doesn't seem some form of  
12 ~~mutality~~ brutality administered to another person, although we are  
13 accused on many occasions of being involved in brutality.  
14 But again, as I say, these are decisions that have to  
15 be made there and then. You don't get the opportunity  
16 to rationalize the thing. You make your decision.  
17 Now there is nothing -- this is just my feeling and  
18 I'm glad it is a closed meeting because I would probably  
19 be hung, but there is nothing that goes against my  
20 grain anymore than busting a kid with a joint.

21 You see, when you have the implication  
22 -- it reminds me of the guy with a bottle of booze--  
23 how many police officers will turn their back when  
24 they see a guy with a bottle of booze? They will turn --  
25 you know, they won't make the arrest.

26 DR. LEHMANN: Is it against the law to  
27 have a bottle of booze?

28 MR. PAUL: The province I come from, de-  
29 pending on the circumstances, if it's after 10:00 p.m.  
30 at night it constitutes an illegal possession charge



1 because the liquor stores are closed. But again if you  
2 look at it this is a decision, you know, the officer  
3 has to make. Now the implications are great, aren't  
4 they, when you take a youngster and you charge him  
5 under this particular statute? All right, fine, we  
6 can say it has been lessened to some degree, and by  
7 that I mean the prosecutor having the discretionary  
8 power of saying whether we will move by way of indict-  
9 ment or summary conviction. Simple possession as I  
10 said this morning I think that maybe if the drug isn't  
11 harmful to the vast majority maybe the answer lies  
12 in removing this.

13 I talked to Professor Kaplan in regard  
14 to his idea. I could say "Okay, fine, let's initiate  
15 this." We will put it into outlets somewhat like our  
16 liquor outlets, that is find, you know, control the  
17 stores. Again, one thing bothers me and that is we  
18 can't keep liquor away from our youth. Are we going  
19 to be able to keep this particular drug away?

20 PROFESSOR KAPLAN: If you want I'll talk.  
21 I don't have much time.

22 I'll say essentially what I think should  
23 be done. I do favour giving -- selling marijuana  
24 through liquor stores -- now by marijuana I mean  
25 marijuana and at least the lower grades of hashish.  
26 You know, you have to draw -- I see no reason to make  
27 the most powerful grades of hashish available just as  
28 in fact we don't make the most powerful grades of  
29 alcohol available. At least in the United States, you  
30 cannot get the very most strong liquor. There is some



1 kinds of rum illegal in most of the American States  
2 if they are over 130 proof or something for public  
3 health reasons.

4 I would say 4% THC would be the way  
5 I would do it, I would sell it in vacuum packed lids  
6 with a tax stamp on the thing, and with a sizeable  
7 tax, perhaps two different grades of potency with two  
8 different types of tax on it. I would make everyone  
9 that bought some from the store sign for it the way we  
10 do with cough medicine in the United States. In other  
11 words, I would risk overcontrol rather than undercon-  
12 trolling it just because you have a certain feeling of  
13 human infallibility and we might be making some kind of  
14 a mistake even though I really don't think so.

15 I would restrict the age. In Canada you  
16 have got a problem. The proper age, it seems to me, is  
17 18 for marijuana and alcohol. But you don't have con-  
18 trol over the age for alcohol and it would strike me  
19 strange to allow a lower age for marijuana than for  
20 alcohol especially if you are selling it in the same  
21 stores. So I would have to say at this point it should  
22 be 21 except in those provinces which allow a lower  
23 age for alcohol in which case it should be the same,  
24 I would -- now there are a number of other things that  
25 you could do in this respect. You can mark if you want  
26 to, if you are really serious about the sources of supply  
27 to young heads you could even mark the marijuana with  
28 phosphorous. It is technologically possible, it is  
29 cheap and it is not in any way harmful and that way  
30 if you catch a 12 year old with a joint you can find



1 out who bought that joint. It's not really that difficult.

2 DR. LEHMANN: What is it?

3 PROFESSOR KAPLAN: Phosphorous. You have  
4 literally billions of combinations you can use biologic-  
5 ally.

6 PROFESSOR ROSENTHAL: Could you trace  
7 it rhough the outlet?

8 PROFESSOR KAPLAN: You could trace it  
9 through the outlet. Essentially, whoever signed, each  
10 tax stamp has a number on it and it corresponds to the  
11 phosphorous and considering the enormous profit margin  
12 in marijuana, this would be absurdly cheap. I'm not  
13 sure it's necessary. The way I look at it young kids  
14 get alcohol today and they get marijuana today and they  
15 will get marijuana tomorrow and alcohol tomorrow. I  
16 think the big advantage for young kids in terms of a  
17 licensing system is in the educational area; that first  
18 of all - even apart from writing on the lid, you know,  
19 marijuana may be dangerous to your health in the  
20 following aspects which comes with a much higher grade  
21 of credibility if you are not seen as the handmaiden of  
22 law enforcement, trying to justify what seems to be an  
23 absurd distinction between marijuana and alcohol. You  
24 can, as I remarked to the sergeant, what happens today  
25 you say to a young person "Marijuana is more dangerous  
26 to young people in terms of a drug of abuse than it is  
27 to older people", at least as far as we can tell. And  
28 one reason is dependence during ones high school years,  
29 interferes with studying which may be more important to  
30 growth and interferes with working through adolescent



1 problems. So you could imagine just what you would say.  
2 The problem is when in the next breath you tell young  
3 kids that of course if we find your father smoking it  
4 we're going to throw him in jail too, you destroy the  
5 basic educational method that you are trying to get across.

6 Now you ask me what are my objections  
7 to Mr. Schwartz's plan? One is it will produce massive  
8 police corruption on a scale that you really can't  
9 conceive of unless Canadians are better people than  
10 Americans. They may be but I don't think they're that  
11 much better.

12 The problem is, in some sense you bag  
13 organized crime to take over the marketing of marijuana  
14 and say "Well, we are going to discourage all other  
15 people; we're going to make it sort of hard to catch  
16 you." The profit margins will be so enormous that you  
17 will get police corruption and you cannot help it.

18 Second, in terms of Lou Schwartz's  
19 idea about stamping out marijuana selling as a way of  
20 making a living, my answer is the best way of doing  
21 that is to sell it in the liquor stores. I think it  
22 also has a therapeutic value because I think you have  
23 an alcohol problem in Canada and I think one of the  
24 very best ways of making people confront that is going  
25 into a store where you have your choice of drugs because  
26 one of the classic ways or classic problems of alcohol-  
27 ism is people that refuse to admit that they are  
28 dealing with a drug. The best way to convince people  
29 that you mean business is to mean business and if you  
30 are going to try to convince them that they have a



1 drug problem the best way you can do it from their  
2 point of view is just let them go in and buy their  
3 alcohol in a store that sells drugs. You also, if you  
4 use Lou Schwartz's method, the partial criminalization,  
5 you cannot tax it and I think a tax would provide  
6 money and I think that's important. You can break  
7 its potency, you can prevent adulteration. You don't  
8 have the problems of selective police enforcement and  
9 you don't have the necessary police user, undercover  
10 agents and entrapments to trap the big gang because  
11 what's going to happen if you just say "Make large  
12 scale commercial dealing illegal", the policemen are  
13 still going to have to use the same kind of method  
14 against these people that are objectionable against  
15 users, and not only that, they'll have to use more  
16 because the way you get, of course, to the large scale  
17 sale dealers you infiltrate the users and work your  
18 way up.

19 DR. LEHMANN: What would you do about  
20 behaviour which is not acceptable under the law and  
21 maybe it may not be due to intoxication?

22 PROFESSOR KAPLAN: I don't care what  
23 it is due to. You are responsible for your behaviour.  
24 If you beat somebody up -- you handle somebody who beats  
25 somebody up.

26 DR. LEHMANN: In impaired driving -- are  
27 you just being sentenced because you were driving in  
28 a kind of a wavy way or because you were intoxicated?

29 PROFESSOR KAPLAN: Okay, that's the  
30 only aspect of -- the way I would handle it is, first



1 of all, at least as far as you can tell, driving under  
2 the influence of marijuana is a much less serious  
3 social problem than driving under the influence of  
4 alcohol, as far as we can tell. There are only two  
5 studies now, one of which is yet unpublished, but it  
6 looks pretty good to me talking to users. Okay, that's  
7 the first thing.

8 Second of all, if you are really worried  
9 about the problem I suspect that you can test for the  
10 phosphorous in the urine. You know, as long as you  
11 are going to use an adulterant, you may as well have  
12 something you can test for and in fact we are going  
13 to have a marijuana test in about two years anyway,  
14 a urine test.

15 DR. LEHMANN: If you smoke you can't get  
16 the fluorescent markers.

17 PROFESSOR KAPLAN: Put it this way, if  
18 that were the problem, technologically that is not a  
19 serious problem in terms of getting something to go  
20 with the half-life which is about two hours which is  
21 about the half-life of marijuana intoxication. I don't  
22 worry about it because frankly you would have a test  
23 within two years. There are certain problems about it  
24 but I don't consider the problem serious primarily  
25 because by and large you get people for what they do  
26 even in drunk driving in the United States at least  
27 the way you catch drunk drivers is when they do  
28 something.

29 DR. LEHMANN: One other question:  
30 Supposing there is suspicion that a surgeon operates



1 and makes a mistake, not just because of a clinical mis-  
2 judgment but he does it because he is stoned.

3 PROFESSOR KAPLAN: I guess I would handle  
4 it the same way as if he were drunk.

5 DR. LEHMANN: Again you would have to  
6 prove that he was and there are a lot of other things  
7 where this might enter - until a test is developed  
8 what are you going to do in the meantime?

9 PROFESSOR KAPLAN: My view is the harm  
10 of trying to handle that thing outweighs any benefit.  
11 I'm not really worried particularly about a surgeon  
12 getting stoned on marijuana. My view is if they really  
13 want to perform bad operations they are going to find  
14 some reason to do it.

15 DR. LEHMANN: If they are drunk they will  
16 be stopped or they will be later held responsible for  
17 it.

18 PROFESSOR KAPLAN: I'm not sure. I think  
19 in fact if they take Vodka and certain other things  
20 their drunkenness will be unobservable, at least in  
21 the kinds of cases where they would be able actually  
22 to get up to do their operation.

23 PROFESSOR ROSENTHAL: If there is a  
24 surgeon doing marijuana smoking at home and then running  
25 to the hospital as opposed to getting a few whiffs in a  
26 closet in the hospital it would probably be harder to  
27 conceal if you were doing it around the business place,  
28 hospital, than taking your pint in a closet.

29 PROFESSOR KAPLAN: I just don't know.

30 THE CHAIRMAN: What assurance have you



1 got - wouldn't it increase the illicit use of stronger,  
2 more potent forms of cannabis -- for example, hashish  
3 that you would not make available?

4 PROFESSOR KAPLAN: My guess is that if you  
5 do find a very serious increase in the kinds that you  
6 don't make available then you have to make them available.  
7 My view is you should not make anything -- the top  
8 ranges in terms of social danger 00 just like tax. In  
9 other words the potency and the tax is very similar.  
10 The potency should be such and the tax should be such  
11 as to discourage bootlegging and if you have no boot-  
12 legging you know you're getting either too strong stuff  
13 or too low taxes and on the other hand, if you have more  
14 than 2%, say, bootlegging, the answer is just the reverse,  
15 your ta-es are too high or the potency is too low.  
16 Indeed this is an administrative problem and I would  
17 hope that it would be handled by an administrative  
18 adjudication that, would it have to go through parliament,  
19 it could be adjusted up or down fairly quickly and  
20 fairly simply.

21 PROFESSOR SCHWARTZ: May I say that if boot-  
22 legging is the danger here, our own experience with  
23 state dispensed liquor and heavily taxed liquor indicates  
24 that bootlegging is going to be a problem. It's going  
25 to be bootlegging both as to private manufacture and  
26 as to this provision on an informal basis to prohibited  
27 age groups and the like, but I would hasten to add that  
28 in characterizing Mr. Schwartz's plan as a very mild  
29 adherence from Schwartz. With much less conviction in  
30 his favour than John Kaplan has against it.



1                   That may represent just an age gap,  
2 generation gap.

3                   PROFESSOR ROSENTHAL: What is really  
4 at stake between the two plans, the Schwartz plan and  
5 the Kaplan plan -- you could look at one or two aspects  
6 in the same thing, some unknown differential in the extent  
7 of use, basically. I suspect it's going to be a substan-  
8 tial differential but that's only a guess and I guess  
9 the second thing is part of the same thing, is as long  
10 as you don't legalize it in the sense of the regulated,  
11 probably whether you intend to or not you're not going to  
12 give some people the impression as much that this is  
13 approved. I said intend to or not. One of the problems  
14 we get into in the States and you've probably got into  
15 too, we use the criminal law so much that so many people  
16 think if you don't have the law, if you repeal it,  
17 whether they should or you shouldn't then it must be  
18 okay.

19                  THE CHAIRMAN: That's right. That's a  
20 very important question that I would like your judgment  
21 on and I have it down here as the value of the criminal  
22 law stigmatization. What would be the effect of the  
23 liberalization of the law? What would be the effect  
24 or harm of attitudes toward use? Now we adopt in  
25 this country what I call a responsible conservative  
26 opinion, concern of the effect of any significant  
27 liberalization of the law on the perception of the  
28 potential for harm. Professor Kaplan, you said that you  
29 thought by making this available through government  
30 outlets, would facilitate an educational programme with



1     respect to the potential for harm. What are the  
2     general views on this?

3                     PROFESSOR SCHWARTZ: This business of  
4     perception of a change in the criminal law as an approval  
5     you might say, I heard this argued on the discussion  
6     of the abolishment of capital punishment. People have  
7     said to me, if you're going to take away capital punish-  
8     ment well, a person might as well commit murder. But  
9     more realistically I have struggled for years in connec-  
10    tion with the reform of the substance of criminal law  
11    in such areas as criminal adultery. We have widespread  
12    -- I mean not the activity, but the law. We have crim-  
13    inal adultery laws and criminal sodomy laws and lots  
14    of laws in gambling and prostitution and so on and I  
15    have struggled for a formula under which the legislature  
16    could, in a preamble say, "We very much disapprove  
17    of this activity but we have found that the criminal  
18    law is an inappropriate means of dealing with it."  
19    I've never been able to find that antidote.

20                    PROFESSOR KAPLAN: It's the catch all  
21    complaint when you can't think of any other you say  
22    "Well, if we don't handle these people there will be  
23    lynch mobs." It's the other part of that thing ---

24                    THE CHAIRMAN: There is something surely  
25    a little more serious than that here. First of all,  
26    what is said in the statute preamble or otherwise it  
27    is not going to filter down to the public. It's not  
28    a popular, daily, street level educational device.  
29    What's going to filter down, if anything at all, is that  
30    the law has changed. As a matter of fact we find this



very inaccurate perception of what the law is. Now if that's what filters down when the perspective -- when the public debate has been one with reference to harm as it is now with this emphasis on research, with the statement we don't know enough. I mean this is the popular perception of the issue.

PROFESSOR KAPLAN: If you want to get across to the marijuana user there is no better way to do it then to put in on the package that he's buying. There is a practical matter. The point is if you want to get through to him -- you might very well use it with respect to drinking, as a matter of fact. We're certainly going on that assumption with cigarettes, certainly the British are now. I think it cannot hurt and I think it will help. I think furthermore, if your attack is not that marijuana is not harmful but rather that the social course of the law are such that the harm, societal harm can't be tolerated anymore, and the drug is bad but the law is worse, I think you come out with a position that not only in terms of education on marijuana, but I'm worried much more on the education as to speed, LSD, heroin, with a significantly higher abuse potential than marijuana. Now the one problem is, even if you gave up on education on marijuana, at least the advantage of that would be that you wouldn't suffer from the destruction of credibility over marijuana that now hurts your heroin, LSD and speed kinds of education.

THE CHAIRMAN: Look, you see here you have ---

PROFESSOR KAPLAN: When you say look, you



1 know ---- (laughter)

2 MR. CAMPBELL: It's a nebulous sort of  
3 thought, but clearly, I think we agree, or it's been  
4 implied today that the law won't work unless there is  
5 a consensual base. Earlier today we talked about murder  
6 and theft and it was agreed there was a consensual base  
7 somewhere in society that these things are bad things  
8 and hence people will say that law makes some sort of  
9 crude sense. And we moved into this other area and  
10 I want to come to the question of alternatives that  
11 we've hardly touched on at all. Is there any basis for  
12 sort of a generalized despair that if you look at  
13 your drug users, your alcohol users and your cannabis users  
14 and your acid users and your speed users, that what we  
15 are faced with is a society that is so unbelievably  
16 fragmented that we can't rely on primary group controls,  
17 we can't look to our traditional categories of class  
18 as having any real meaning of shared values; we  
19 couldn't even think of a class by class law that would  
20 work and I doubt if we would even find your communities  
21 very effective, Mr. Quinney, put in terms of this  
22 reality. But you talk about filtering information down.  
23 One thing that has been abundantly clear in this whole  
24 drug area is that you have realities or perspectives or  
25 whatever we want to call them that are filtering devices  
26 on that information and they will twist them to whatever  
27 the recipient wants to believe anyway. Can we really  
28 think of law, criminal law particularly, as operating  
29 outside of a diminishing number of areas where there  
30 is hope for consensus? Still there is hope for con-



1 |   sensus on murder and large scale theft. But beyond  
2 |   that, this consensual base, I think is breaking down  
3 |   in the society and I'm beginning to wonder if we aren't  
4 |   in a period where the utility of criminal law in  
5 |   general is rapidly diminishing. But if that utility  
6 |   is diminishing, utility of almost any other control  
7 |   device that I could think of, be it education or  
8 |   preaching or, I don't know, may also be diminishing  
9 |   at an accelerating rate and we are really getting the  
10 |   social application of a third law of thermodynamics.

11 |           DR. LEHMANN: No, that doesn't follow.

12 |           MR. CAMPBELL: What, the third law of  
13 |   thermodynamics?

14 |           DR. LEHMANN: That there is increasing --

15 |           PROFESSOR KAPLAN: Isn't that central  
16 |   law of thermodynamics? (laughter)

17 |           DR. LEHMANN: You mentioned only the law  
18 |   and education but there may be other ways such as  
19 |   interaction and shaping attitudes.

20 |           MR. CAMPBELL: I'm just wondering whether  
21 |   these groups in which this interaction is taking place  
22 |   and taking place effectively, are not pretty constantly  
23 |   reducing in size and as they reduce in size, the hope  
24 |   for a shared perspective or consensus in the society  
25 |   isn't diminishing?

26 |           THE CHAIRMAN: What is your conclusion  
27 |   then on that?

28 |           MR. CAMPBELL: I'm not drawing a con-  
29 |   clusion; I'm raising a question, but the question really  
30 |   is, are we in a period, talking about law here, where the



1 utility of the criminal law in so many areas including  
2 drugs is simply reducing at an increasing rate?

3 THE CHAIRMAN: It was also suggested  
4 other methods of social control are diminishing in  
5 effectiveness.

6 DR. MOHR: Why is control the only  
7 perimeter you look at?

8 MR. CAMPBELL: Because that is all I was  
9 talking about.

10 PROFESSOR EDWARDS: I wonder before Mr.  
11 Campbell's idea is too generally accepted, whether one  
12 might not point to something that is a fairly paradoxical  
13 situation in which there is those who maintain the  
14 criminal law and its sanctions are wholly ineffective  
15 in controlling the situation you are concerned with, are  
16 themselves, perhaps, no less vocal in advocating the  
17 use of the same sanctions in those other areas what  
18 they describe as antisocial activity. One has only,  
19 I think, to think in terms in the field of income  
20 tax evasion, matters in terms of competitive commercial  
21 activities in the area that the Minister of Commercial  
22 Affairs, and Federal Minister is concerned with, and in  
23 the area of pollution, to see the fairly determined  
24 enunciation of the view that it is the criminal law that  
25 represents the solution to this problem. And in the  
26 situation where there is no more demonstrable evidence of  
27 the efficacy of the same sanctions in these areas,  
28 than there is in relation to the problem that we  
29 are facing with regard to psychotropic drugs.

30 PROFESSOR KAPLAN: I think that is a



1 little apocalyptic.

2 PROFESSOR WEILER: I was going to take  
3 it into something else.

4 MR. STEIN: Could you say something about  
5 other perspectives that you had in mind besides control?  
6 You inferred you found the control framework not the  
7 only one.

8 DR. MOHR: It strikes me that when we  
9 talke 90% of the time it is control, how do we control  
10 this, either by force or by manipulation, there is some  
11 change there and, you know, I'm not conviced this is the  
12 only way of looking at it because it seems to me what  
13 we assume again is this rationalistic structure model  
14 that we in fact make society go in and it's a much more  
15 organic way, you know, society goes anyway. And that  
16 this mind controlled is implied -- it is not necessary.  
17 I agree that the society Mr. Campbell referred to accrues  
18 from a society to face it but I would suggest that this  
19 would be what I would assume to be a healthy society  
20 and it would plan the kind of society that we have,  
21 (inaudible) I'm not really concerned about the  
22 society this has created.

23 MR. STEIN: If the lack of control or  
24 alternative -- is there an alternative to control  
25 other than, for want of a better way to oversimplify the  
26 position taken earlier in effect was, let's leave every-  
27 thing go; is that the alternative?

28 DR. MOHR: Not to let everything go because  
29 they aren't concerned again, as we understand. There  
30 are all sorts of things going on, people taking drugs



1 and all sorts of things go on in any case. I think  
2 somewhere there is a peculiar human habit that we want  
3 to know and understand what it is that goes on and  
4 that's really the business that we are involved in.

5 PROFESSOR BERTRAND: Yet we were looking  
6 for some way of conveying that a substance or some  
7 substance may be harmful, may not be used or should  
8 not be used indiscriminately. And we were wondering,  
9 I think, in an earlier phase of this discussion if --  
10 that was not clearly put, I think, but I am wondering  
11 if the criminal law is the only instrument to carry a  
12 picture of some caution that would be necessary in  
13 the handling of a matter, in the handling of a substance  
14 and I'm just wondering what is it?

15 PROFESSOR ROSENTHAL: Could I ask you  
16 a question for you to clarify what you mean? Do you  
17 mean in terms of prohibition, whether you call it criminal  
18 as a punishment or a civil fine, penalty like a business,  
19 you shall not have it or do you mean a channeling use  
20 of various ways, perhaps limiting, restricting but  
21 when it comes up against it if you want it bad enough  
22 at least if you meet certain requirements, you can get  
23 it. I don't know what you mean.

24 PROFESSOR BERTRAND: That's not what  
25 I mean. Dean LeDain?

26 THE CHAIRMAN: I thought you were  
27 speaking of the information, conveying of proper  
28 understanding of potential for harm of drugs, is the  
29 criminal law the only means of conveying this message.

30 PROFESSOR KAPLAN: The criminal law is



1 one of the worst means of conveying the message because  
2 it conveys the wrong message. Typically, in the alcohol  
3 field you find the (inaudible) between the abstinence  
4 people and the temperance people. Criminal law conveys  
5 the abstinence message, "Don't touch it". The temperance  
6 people on the other hand, believe in learning to drink  
7 like a gentleman and not getting drunk. So my mind it's  
8 fairly clear that temperance is right and abstinence  
9 is wrong.

10 PROFESSOR WEILER: That's because you  
11 believe temperance is the correct response. What about ---

12 PROFESSOR KAPLAN: What I mean by saying  
13 temperance is right and abstinence is wrong is that  
14 at least the authorities in the field feel that your  
15 alcoholism rate will be lower if you preach temperance  
16 rather than abstinence. In other words, the rate of  
17 the social casualty to the people in mental institutions  
18 with cirrhosis of the liver will be lower if you preach  
19 temperance. Now in heroin -- I'm not saying obviously  
20 -- it's not obvious at all. My guess is that heroin  
21 is so addicting that in some sense you might as well  
22 tell people that "You cannot be temperate about heroin  
23 use. If you try it you'll run too high a chance of  
24 getting "hooked". But I want to make one caveat there,  
25 in the old American midwest, the fatal glass of beer  
26 was a very common picture. People were told that if  
27 they took one drink they would end up on skid row.  
28 And you know, a very surprising portion of them took  
29 one drink and ended up on skid row because you had  
30 built in this kind of a prophesy. Now there is obviously



1 some biochemical mechanism about drugs and there is  
2 other mechanisms about suggestion and, you know, what  
3 is the expectation. With alcohol I feel fairly  
4 confident that we are better off with temperance.  
5 I'm not confident that we are better off with temperance.  
6 I'm not confident about heroin, I just don't know. With  
7 marijuana I'm almost supremely confident that you're  
8 much better of preaching temperance than you are  
9 abstinence.

10 PROFESSOR WEILER: The point that I wanted  
11 to make and the reaction I wanted to get particularly  
12 from Mr. Kaplan and Professor Schwartz is the Schwartz  
13 model or the vise model which I don't think is appropriate  
14 to marijuana, it seems to me is appropriate for those  
15 drugs that we would want to continue to criminalize. I  
16 think quite frankly there are other drugs that we may  
17 want to respond to in the same way that we do with  
18 marijuana but there are some drugs that we don't want  
19 to respond to in that way. I think hereoin and speed.  
20 It seems to me there that for the reasons Professor  
21 Schwartz suggests that we get as much in the way of  
22 general control, as much in the way of general deterrents  
23 that we are likely to get out of the criminal law through  
24 the prohibition on trafficking, or possession for traffick-  
25 ing. But the reason that Mr. Rosenthal suggests, I don't  
26 think we are likely to get anything in the way of  
27 rehabilitation through civil commitment or quasi  
28 civil commitment through arresting.

29 PROFESSOR ROSENTHAL: If you realize those  
30 techniques are effective first, then you could get



1 whatever legal -- exactly what you need.

2 PROFESSOR WEILER: And when you don't have  
3 those techniques, it seems to me the existence of the  
4 possession offence causes a substantial degree of the  
5 misery and the inequality and inequity in the enforce-  
6 ment of the heroin laws. We're not getting anything  
7 out of it.

8 DR. LEHMANN: Possession does.

9 PROFESSOR KAPLAN: The educational effect  
10 of making possession of heroin no fun. I'm not sure,  
11 I waiver on this. I can't swear that I am one way or  
12 the other. On the one hand that if you have methadone  
13 maintenance, compulsory methadone maintenance or some-  
14 thing for heroin addicts then it may very well be that  
15 you should have a possession offence.

16 PROFESSOR WEILER: Why?

17 PROFESSOR KAPLAN: Because it's the  
18 best way to get them into a methadone programme as an  
19 alternative treatment.

20 PROFESSOR ROSENTHAL: What about a  
21 methadone programme voluntarily?

22 PROFESSOR KAPLAN: I don't think so, no,  
23 I guess not.

24 DR. LEHMANN: But why did you say we don't  
25 want the same laws for cannabis as we want for speed  
26 and heroin?

27 PROFESSOR WEILER: Myself I think we should  
28 not as a society want to try to achieve what we appear  
29 to be looking for in the marijuana, speed areas.

30 DR. LEHMANN: On the basis of greater



1 | harm?

2 | PROFESSOR WEILER: There isn't that much  
3 | in the way of harm that we are trying to prevent, and  
4 | even if there is we're having very little success. I  
5 | think the primary reason for the failure of the criminal  
6 | law educationally or in terms of enforcement, is there  
7 | are too many people that disagree with the basis, who  
8 | we are willing to use it and we've reached the point  
9 | of diminishing returns in terms of success and the fact  
10 | that there are that many people cumulatively creates  
11 | all of the serious problems and the serious costs of  
12 | trying to do it. So I'm balanced and I'm certainly  
13 | not against the marijuana laws in principle assuming  
14 | there is some kind of harm that we might want to  
15 | prevent on entering. But even if there is and I'm  
16 | not an expert, we just can't do it.

17 | THE CHAIRMAN: Assuming there isn't  
18 | the same difficulty about enforcement against the  
19 | use or simple possession of heroin, why do you suggest  
20 | -- at the present time, why do you suggest the dropping  
21 | of the possessional offence?

22 | PROFESSOR WEILER: I don't think we get much  
23 | in the way of extra leverage in terms of social  
24 | control in the addition of the possessional offence  
25 | and I think there is a substantial degree of the  
26 | cause of enforcement come from that specific offence.

27 | THE CHAIRMAN: What about the point  
28 | Professor Kaplan made at the beginning of this  
29 | morning, namely the political problems that outweigh  
30 | the public reception?



1 PROFESSOR WEILER: The political role of  
2 commissions -- first of all, it seems to me that in  
3 the debate that emerges after this report -- this  
4 report is going to be considered the radical step, the  
5 compromises are all going to be to the right of it. The  
6 compromises shouldn't be made here. The positioning --  
7 I think the best analog is the Carter Commission Report  
8 which set out an ideal scheme. There was lots of  
9 room left for compromises but after the compromises you  
10 are still getting pretty good reform. And secondly,  
11 and this is coming back to the point that I made, the  
12 government takes the time to fight the fight of law  
13 form in an area maybe once every 10 years or probably more  
14 likely once every 20 years and I think we are seeing that  
15 in the case of abortion where we had a relatively mean-  
16 ingless reform but it's terribly difficult to get the  
17 government back into fighting that debate because they've  
18 got a lot of other things to spend their time on. If  
19 we don't deal now with the other drugs because we are  
20 concerned with solely the marijuana problem, we can't  
21 easily come back and say "Well, now we'll deal with  
22 heroin and now we'll deal with speed or now we'll deal  
23 with LSD."

24 For those two reasons I think it is not  
25 good political strategy to concentrate on marijuana  
26 and leave the other ones go.

27 PROFESSOR KAPLAN: I would talk a little  
28 bit on that if I may. One think I should in all  
29 honesty throw in is that the educational effect on the  
30 user is a very different thing from the upsetting effect



1 on the non-users. For instance, I have a feeling that  
2 with the perspective hereoin user the educational effect  
3 of not making it a crime may be a good thing. And if  
4 you are going to do it that way I would defend it on  
5 that, that the thing that works best on young people is  
6 what I call, "It's your ass" kind of education. If you  
7 tell them we're not going to make you a criminal for  
8 this, if you want to be that dumb and go ahead and do  
9 it, it's your ass. The nice thing about that is it  
10 doesn't involve itself in all kinds of anti-authoritarian  
11 -- or at least it minimizes the anti-authoritarian  
12 working of the thing which in some sense very often gets  
13 them just to oppose the authority and it's treating  
14 them more as grown ups. So if you do it, at least do  
15 it that way. That educational message is a very diff-  
16 erent message that you are going to be broadcasting to  
17 other people that of course are going to assume that  
18 you are telling something different to the heroin popu-  
19 lation with the heroin addict. They are not worried  
20 about the message for them, they're worried about the  
21 message for other people and if they understood perhaps  
22 you could get the distinction across.

23 Now as to the contrary argument as to  
24 why I think you should hit at marijuana mostly is  
25 because I perceive the big problem to be marijuana,  
26 not in terms of the harm it does in the society but  
27 in terms of the fact you will never solve the heroin  
28 problem until the marijuana issue is taken care of. The  
29 marijuana is an introductory drug, it's something that  
30 makes the drug culture respectable to those people who



1 are potential heroin addicts. It's also by far the  
2 most widely used of the drugs so -- and it's also in  
3 terms of social control, the biggest problem in terms  
4 of large numbers of the population, getting them out  
5 from under the criminal system and the alienation  
6 that that produces. You're not going to do anything  
7 about the heroin situation in terms of making a free  
8 market in heroin. Anyway, until marijuana is taken  
9 care of, if you decide, you know, and whether or not  
10 the possession of heroin is a crime, should be a crime  
11 is to my mind not very important in the solution of  
12 the heroin problem for this reason: Any rational person  
13 can say that the heroin addiction is a very good pre-  
14 dictor of criminality in a situation -- in a society  
15 that does not provide heroin free or very cheaply to  
16 it's members. Just purely as a predictive device  
17 possession of heroin is something like the possession  
18 of burglar tools and if it's looked at that way you  
19 can say "look, we have nothing against these people  
20 but as a pure predictive device we are going to use  
21 the criminal law to get them off the streets and into  
22 the heroin -- into the methadone clinics."

23 MR. STEIN: That just doesn't make a lot  
24 of sense.

25 PROFESSOR KAPLAN: All right.

26 MR. STEIN: You say heroin is a predictive  
27 device because a person has to be involved in crime to  
28 get heroin so that you don't want to make heroin avail-  
29 able.

30 PROFESSOR KAPLAN: Right.



1 MR. STEIN: Why not?

2 PROFESSOR KAPLAN: That's a point.

3 Remember, I was talking about the situation where all  
4 that was at issue was the penalty of possession of  
5 heroin. Okay? If that is the issue, then I'm right.  
6 If the issue is possession, and should we give it to  
7 people or sell it at cost to people, then my previous  
8 argument is wrong because that is no longer a predictor  
9 of criminality. I frankly don't think you have got the  
10 guts to go that far and say we should make heroin avail-  
11 able because you might add if you make it available only  
12 to addicts someone who is not yet an addict and caught  
13 with heroin, you may still want to make a criminal.

14 PROFESSOR WEILER: If you contain the  
15 possessional offence the logic of your argument really  
16 disagrees with Professor Rosenthal. You have to be in  
17 favour of civil commitment of heroin addicts.

18 PROFESSOR KAPLAN: As I might point out,  
19 civil commitment is merely a procedure to get some  
20 people to do certain things. I don't like the principle  
21 of civil commitment. I would much rather do it through  
22 the criminal system. But I would use the criminal  
23 system primarily as an intake to the methadone programme.

24 PROFESSOR SCHWARTZ: Say John, if only  
25 it's a guts problem, do I infer that if you were in  
26 charge, you would put heroin on the market?

27 PROFESSOR KAPLAN: No.

28 PROFESSOR SCHWARTZ: Well then you lack  
29 the guts too.

30 PROFESSOR KAPLAN: Of course. Not only



1 do I lack the guts, I think it would be wrong. I don't  
2 have to reach the right or wrong of the situation be-  
3 cause right or wrong I still don't have the guts.

4 PROFESSOR WEILER: About applying your  
5 model outside of the marijuana field.

6 PROFESSOR SCHWARTZ: First of all, let  
7 me take advantage of the opportunity to point out that "my"  
8 so-called model does not incriminate the users of  
9 marijuana or those who engage in transactions typical  
10 of users so that there is really no issue in that realm.  
11 The only issue is as to whether we should criminalize  
12 the commercial purveying of marijuana.

13 Now, as to criminalizing possession of  
14 heroin for example, since I have no doubt myself that  
15 I would seek to restrict the supply there, I am rather  
16 easily led -- and since I have no doubts about harm-  
17 fulness which is terribly important, I'm easily let to  
18 the position that I would make it an offence to possess  
19 though I would make it a defence to possess as a  
20 result of addiction.

21 PROFESSOR ROSENTHAL: And what would you  
22 do with the person who claims he is addicted?

23 PROFESSOR SCHWARTZ: A fair and important  
24 question, and with as little faith as I do have in our  
25 rehabilitation processes, I would try to essentially  
26 have out-patient probation supervised efforts to re-  
27 habilitate with methadone.

28 DR. LEHMANN: Of what patients? This  
29 wouldn't get anyone very far I'm afraid.

30 PROFESSOR SCHWARTZ: For the reasons that



1 John has several times today elaborated that it's  
2 desirable to have.

3 PROFESSOR EDWARDS: Like motherhood.  
4 Because it appears to you to be constant with your  
5 ideas of what is right in society that you should try and  
6 treat people who have any awareness of the effectiveness  
7 of the treatment.

8 PROFESSOR SCHWARTZ: No, you can rechannel  
9 addiction into less undesirable processes.

10 DR. LEHMANN: Only if you put teeth into  
11 it and it has to be constantly you're in and you're  
12 out and it has to be maintained and if that isn't done  
13 then it's just a pious hope.

14 PROFESSOR RYAN: Are you really better  
15 off on methadone than on heroin? My understanding is  
16 the only difference is that you don't get the satisfac-  
17 tion out of methadone. It's a dead kind of drug. Is  
18 it only because we don't want people to have pleasure  
19 that we want them on methadone?

20 PROFESSOR KAPLAN: There are several  
21 other reasons. Immediately after a heroin shot you  
22 can't drive an automobile and you're very dangerous  
23 and on methadone when you're stabilized you're never  
24 dangerous. The rush of the drug craving, of heroin,  
25 is just not present with methadone. It's really a  
26 very good drug for an addict and indeed someone on  
27 methadone is no different as far as I can tell who  
28 gets his methadone than any one normal person.

29 DR. LEHMANN: Perhaps that's bad.  
30 Perhaps the addicts have a very good reason to want



1 to be different.

2 PROFESSOR KAPLAN: Then you get back to  
3 the very crucial question we had at the very beginning  
4 of the day, what did you mean by harm? I guess, you  
5 know, you get me up against the wall. I mean harm the  
6 sort of things I don't like.

7 DR. LEHMANN: All right.

8 THE CHAIRMAN: We might as well end on  
9 that note.

10 PROFESSOR RYAN: I don't think you would  
11 want to drive a car just after you had a shot of heroin.

12 PROFESSOR KAPLAN: You may have to to get  
13 back to where you live from where you got the shot.

14 PROFESSOR RYAN: I think you would park  
15 and have a comfortable experience.

16 PROFESSOR KAPLAN: Where I come from  
17 everybody drives a car.

18 THE CHAIRMAN: Gentlemen, we could go  
19 on of course much longer with great profit but we have  
20 to end at some time and we did say 5:00 and we've gone  
21 over a bit. I want to thank everyone of you most  
22 sincerely on behalf of the Commission for your help  
23 today and certainly we have derived a great deal of  
24 benefit from this single day session and probably  
25 we are overly optimistic in calling so many together  
26 but I think you have exercised remarkable incision  
27 and restraint and given us an opportunity to get the  
28 pith as we say in (constitutional law), the pith and  
29 substance of your respective points of view.

30 So thank you very, very much and I hope



1 that as many as possible will be able to linger a bit  
2 with us up in 3402. We are going to have a short  
3 meeting, just take stock of where we are at and maybe  
4 we will find that we can write the Interim Report  
5 next week and then we will join you and we are hoping -- we  
6 are going to have dinner together, as many as can re-  
7 main, at the Escapade at 7:30.

8 ---Upon adjourning at 5:20 p.m.  
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